

VOLUME III
TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 75

FEDERAL TRADE COMMISSION, PETITIONER

vs.

MOTION PICTURE ADVERTISING SERVICE COMPANY,
INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 20, 1952
CERTIORARI GRANTED OCTOBER 13, 1952

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G

R

P

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W

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A

D

F

G

H

M

M

M

R

INDEX

EXTRACTS FROM TRANSCRIPT OF HEARINGS

	Page.
Commissioner's witnesses:	
Campbell, Noble C.....	45
Grinspan, T. B.....	1
Karrigan, Rene P.....	32
Pope, J. A.....	5, 12
Reichart, W. B.....	19
Weigand, Robert.....	29
Petitioner's witnesses:	
Alexander, J. Don.....	56
Dunlap, Forrest.....	92
Forsythe, Earnest Hugh.....	100
Graetz, Bert E.....	94
Hendren, William Hardy, Jr.....	64, 82
Mabry, C. J.....	67, 101
Mann, Monty.....	85
McInaney, Michael J.....	61
Ray, Reid H.....	52

(I)

**In the United States Court of Appeals
for the Fifth Circuit**

No. 13493

**MOTION PICTURE ADVERTISING SERVICE COMPANY, INC.,
PETITIONER**

v.

FEDERAL TRADE COMMISSION, RESPONDENT

**ON PETITION TO REVIEW AN ORDER OF THE FEDERAL
TRADE COMMISSION**

APPENDIX TO RESPONDENT'S BRIEF

I

EXTRACTS FROM TRANSCRIPT OF HEARINGS

* * * * *

[76]* T. B. GRINSPAN was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. COLLINS:

Q. Mr. Grinspan, will you please state your name and address and spell your name. — A. T. B. Grinspan, G-r-i-n-s-p-a-n, 1700 Keo Way, Des Moines.

*Bracketed numerals used throughout this Appendix refer to page numbers of the Official Transcript of Hearings.

Q. Mr. Grinspan, in what business are you engaged?—A. Engaged in the production of film advertising, theater trailers and industrial film 1635.

Q. How long have you been so engaged?—A. The Company has been in business twenty-eight or twenty-nine years. I have been there ten years.

Q. You have been connected with the Company about ten years?—[77] A. Right.

Q. What is the name of the Company?—A. There are two companies, Parrot Distributing Company and Parrot Films Studio.

* * * *

Q. Now, Mr. Grinspan, were you engaged in renting, leasing, or selling or what distribution do you make of the films produced by you?—A. All films are sold outright either to the ultimate advertiser or through distributors traveling throughout the territory. They are bought outright from us and sold to the ultimate advertiser for filming purposes.

Q. That is advertising films?—A. That is advertising films.

Q. Are advertising films about which you speak, what are known as library films in the trade?—A. We used to make them several years ago and they were handled [78] that way—sold outright with arrangements for the screening of the films made either by the distributor who sold directly to the advertiser or the advertiser himself. Parrot Films has not had screening arrangements with dealers for many years.

* * * *

Q. Now, could you name some of these independent distributors?—A. Well, there was Mr. Campbell.

Q. Do you know his initials?—A. N. C.

Q. And his address?—A. Bloomington, Indiana.

Q. Bloomington, Indiana?—A. Yes.

Q. Do you know generally what territory he worked?—A. Kentucky, West Virginia, Virginia, and North Carolina.

Q. Could you name some other independent distributor?—A. Robert Shulman.

Q. Now, getting back to Mr. Campbell: How long has he been [79] a customer of the Parrot Film Company?—A. He was a customer when I went with the Company and he is still selling some of our products.

Q. What lines of film did Mr. Campbell purchase from you?—A. Well, he formerly purchased so-called library films. He called on advertisers through the territory mentioned and was selling the films outright to the advertiser. At the present time he sells only composite merchandise reels.

Q. You say he formerly bought the library films from you. When did he buy library films from you?—A. He bought them up to the time—about 1942, I would say. The production of library films was such that in order to sell it was necessary to sell outright at a price the advertiser would pay and he would have to sell a volume of business out of each particular production and as it decreased critically, we got out of production and have produced no library films since about 1942.

* * * * *

[80] Q. Could you name any other customer?—A. Well, there was J. A. Pope down in Arkansas. He worked in Arkansas and Oklahoma.

Q. For what period of time was Mr. Pope a customer of yours?—A. Well, it was for a two or three year period probably—between 1938 and 1941—in there someplace.

Q. And for what type of products?—A. The same type, both library sold outright and composite merchant films.

Q. Do you recall approximately when you received the last order from Mr. Pope?—A. The last one I know about was prior to November 1942, which was the time I left the Company to go into service.

* * * *

[81] Q. Could you name any other customer, Mr. Grinspan?—A. We have made both library and special films for Film Advertising Agency at Minneapolis.

Q. That is the company operated by Mr. Dougherty?—A. Right.

Q. And for how long—Do you still sell to Mr. Dougherty?—A. Very little. I think one order in the last six or eight months. We were selling Mr. Dougherty his library films outright and inasmuch as we haven't produced any new ones for several years they became obsolete and we had nothing to sell to him in those particular lines.

Q. Mr. Grinspan, I believe Mr. Dougherty testified that he was unable to get library films from you. Do you recall any orders having been placed by Mr. Dougherty which you did not fill?

Mr. DONNELLY. I think you should include what period of time Mr. Dougherty was talking about.

By Mr. COLLINS:

Q. It was 1942.—A. To the best of my knowledge in 1942, Mr. Dougherty had a complete list of the films we had available and any on that list would be available to him. That is not true today. Any we have are obsolete and no new ones have been produced to satisfy his accounts.

Q. Why are you unable to supply library films at the present time?—[82] A. The main reason is the fact we do not have enough outlet to distribute them. They are produced at a certain cost and in order

to sell competitively there a volume would have to be sold. They could be made specially for Mr. Dougherty if he placed an order for them if he could afford to pay the cost of the particular film. He can't and the same is true of anyone else's order. In making up library films if you figure a certain number of outlets and figure the costs of individual sales it is lower than if made for one particular individual. And not having an outlet for the films at the present time we are not making them. Mr. Dougherty evidently can't pay the costs for special production.

* * * * *

REDIRECT EXAMINATION

[87] By Mr. COLLINS:

Q. Mr. Grinspan, when was the peak of the business, would you say, in the library film business?—

A. 1938 and 1939. After that it started to drop off.

Q. It started to drop off after 1938 and 1939. Now, was the dropping off of your business caused by the lack of available films?—[88] A. I am in no position to state definitely what caused the dropping off so far as my personal knowledge is concerned.

* * * * *

Q. Was there an increase or decrease in the orders received from your customers after 1939?—A. A definite decrease.

* * * * *

[97] J. A. POPE was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. COLLINS:

Q. Where do you live, Mr. Pope?—A. Wagner, Oklahoma.

6
Q. In what business are you engaged?—A. Hotel.

Q. How long have you been in the hotel business?—

A. Three years.

Q. Just preceding the time that you went into the hotel business, in what business were you engaged?—

A. I was a distributor of films to advertising trailers.

Q. For what period of time were you engaged in that business?—[98] A. About five years previous to the time I went to Wagner in the hotel.

Q. That would cover what period of time?—

A. Well, let's see, about 1940 to '45.

Q. Just what was the nature of your business?—

A. Well, I would go into the town and book my theater, find out what the rate was to run at the theater, and I would contact the merchant, sell him the film, and he would run them at the theater per so much per week or month or whatever the contract was, agreement was.

* * * * *

Q. From where did you obtain the film?—A. Parrot Films, Des Moines, Iowa.

Q. You didn't produce films yourself?—A. No, sir.

Q. Prior to 1940 in what business were you engaged?—A. A film salesman on the road selling films.

Q. As a distributor?—A. No, sir; salesman.

Q. For whom?—[99] A. Consolidated Advertising Corporation, Hollywood, California.

* * * * *

Q. Mr. Pope, during the years of 1940, '41, '42, '43, '44, and '45 in which you say that you were engaged in the advertising film business as a distributor, what territory did you cover?—A. I put most of the time in Arkansas, some in eastern Oklahoma, and some in southern Missouri.

Q. Did you work that territory yourself or did you have someone work the territory for you?—A. I

worked all of Arkansas myself. I had one man in Oklahoma for a while; I would say five or six months, and the rest of the time I worked Oklahoma, what was worked in Oklahoma.

Q. What type of film was it you were selling?—

A. I was selling advertising trailer; for instance, if you were a Ford dealer we would show the model of the car, the new models of the car, bringing out the features with voice. The footage would run about 40 feet, 40- 45-foot, with the [100] merchant's name on the trailer showing what firm handled the Ford.

* * * * *

[102] Q. During the period of 1940 to '45, were you or not calling on the theaters in Vinita, Oklahoma, in sixty- and ninety-day periods?—A. Yes, sir.

Q. Do you know how many theaters are in Vinita, Oklahoma?—A. Yes, sir; three—was at that time. I don't think there is but two now.

Q. Did you or not ever screen any film advertising on the screens of any of these theaters?—A. Yes, sir; one house.

Q. You know the name of the theater?—A. Well, as I remember, it was Victory; it was about a third- [103] or fourth-run theater across the street from the—

Q. Third or fourth run?—A. Yes, sir.

Q. What do you mean?—A. They don't buy any first runs because the Griffin Amusement had them all bought up, froze out.

Q. For what period of time did you screen film advertising on the screens at the Victory Theater?—

A. You mean how long a contract did I make on them or how long I kept ads running there?

Q. How long did you keep ads running there?—A. I kept ads running there all these three years on that one theater, small theater. However, I had several

merchants requesting—want advertising over on the Griffin Amusement House, which I believe the name is IMP, I believe; I won't be sure about the name, and I was refused the courtesy of letting them run on that theater due to the fact that they had a contract for the screen advertising either with United or Alexander. I wouldn't know which; I don't recall which firm.

Q. With whom did you discuss the matter?—A. The manager of the theater.

Q. What did the manager advise you?—A. He advised me that he couldn't run them; they had an exclusive contract. He told me I could go into the main office, but I would find that condition. I did and found that [104] prevailed in all Griffin Amusement Theaters, so they told me, that it did.

Q. I believe you stated you didn't know or didn't recall whether they told you with what company they had the contract.—A. No, sir. I wouldn't be positive on that. It has been over three years since I sold any film, and I haven't been in contact with theaters in that length of time. I just wouldn't be specific. It is either one of the three firms. There are only three operating in this territory that I have been in; one is United; one is the Motion Picture Theaters out of New Orleans, and Alexander Film out of Colorado Springs.

* * * * *

[105] Q. During the period of time from 1940 to '45, did you do any work in the City of Miami, Oklahoma?—A. I tried to book it. I didn't never get bookings; no, sir.

Q. How many theaters?—A. Two, two at that time.

Q. Did you contact both theaters?—A. Yes, sir; both owned by one man.

Q. Both owned by one man?—A. Yes, sir.

Q. You know the name of the man who owned them?—A. Well, I have forgotten his name. I believe his name—I believe it is Thompson. I won't be sure on the name.

Q. Did you discuss the matter with the owner?—A. Yes, sir. I believe he told me that United—United had his exclusive. I believe he told me that. I know it was either United or Alexander; one had it tied up exclusive.

[107] Q. Did you work Claremore, Oklahoma?—A. I tried to.

Q. How many theaters are located in Claremore?—A. Two.

[108] Q. Did the party that you contacted advise you why he would not screen your film advertisements?—A. Yes, sir.

Q. What was the reason given?—A. Exclusive contracts.

Q. Did he say with whom?—A. He told me; yes, sir. I don't recall which Company. It was either Alexander or United.

[109] Q. Did you ever solicit any theaters in a town of Tahlequah?—A. I come in contact with a theater; yes, sir.

Q. Do you know how many theaters there are?—A. Two, two theaters.

[110] Q. Were you able to get any of your film advertisements screened there?—A. No, sir.

Q. Did Mr. Thompson give you any reason why he wouldn't screen your film?—A. Exclusive contracts.

Q. Did he say with whom?—A. I don't recall

whether he specified in that case or not. I called him up over the telephone at his home, and I won't be specific on that one.

[112] Q. Mr. Pope, was it your testimony, that you contacted the theaters in the different towns that you have named in periods of sixty and ninety days through the years 1940 to '45?—A. I wouldn't say that I contacted them every thirty, sixty, or ninety days; no, sir.

Q. How often did you contact them?—A. That would be impossible for me to answer just truthfully because I just—I wouldn't know. If I was going through a town and could catch the exhibitor every sixty days, I would always contact him. I might come in this time and he is out of town, and I would miss him. I wouldn't catch him in for say, 120 days. It would be sixty days more before I would be back through that town. I tried to contact him, I will say every sixty to ninety days.

[115] Q. Did you ever work the town of Joplin, Missouri?—A. I have tried to, contacted the theaters.

Q. Do you know how many theaters are in Joplin?—A. No, sir; I wouldn't know exactly how many. I would say—I contacted five or six, best theaters, leading theaters.

Q. Did you contact—I believe you said you didn't know the names of the theaters?—A. No, sir; I don't remember the names of the theaters.

Q. And you don't know how many are in town?—A. No, sir. I don't know exactly how many, no. I know I didn't book any of them. I tried until I got tired of calling on them, and I quit, figured it wasn't

any use of—they was contracted. It would be no use of me wasting my time.

[124] Q. Did you ever work the town of Cape Girardeau?—A. No; contacted the theaters but never worked there.

Q. You contacted the theaters?—A. Yes, sir.

Q. Do you know how many are located in Cape Girardeau?—A. At the time I was there, about four, to the best of my knowledge.

[125] Q. Did you ever have any of your ads screened on the screen there?—A. No.

Q. Are those theaters members of a chain or are they independent theaters?—A. They are a chain.

Q. Did I ask you if you knew to whom you talked with reference to those?—A. To the man—said he was the manager of the theater.

Q. Did he give you any reasons?—A. Exclusive contracts.

Q. Did he say with whom?—A. I don't recall.

[128] Q. Mr. Pope, why did you quit the film advertising business?

A. I couldn't book enough theaters to keep me going.

[161] Q. Mr. Pope, you had no difficulty getting film during any of this period from 1940 to 1945?—A. Very little, I would say.

Q. Get all you could sell?—A. That is right; that is right.

Q. Was the quality of these trailers or this so-called library film pretty equal during this whole period from '40 to '45?—A. Well, to the best of my knowledge; yes. I had no complaints. I saw some running in the theater, saw them running along with Alexander and MPA and the United, and I couldn't see there was any difference.

[169] J. A. POPE was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Q. Mr. Pope, did you at any time during the years 1940 through 1945 solicit any theaters in the town of Fayetteville, Arkansas to screen film advertising?—A. Yes, sir.

[170] Q. Were you able to get a screen contract with them?—A. No.

Q. Did they give you any reason for not screening your film ads?—A. Yes; exclusive contract.

Q. With whom?—A. Alexander, as well as I remember.

Q. Did you ever contact any theaters in Little Rock, Arkansas, with reference to screening film ads?—A. Yes.

Q. You know how many theaters are located in Little Rock?—[171] A. Well, as well as I remember, I contacted nine, I believe, in Little Rock.

[172] Q. Were you able to get any of your screens—films screened?—A. No; not in Little Rock.

Q. Did they advise you the reason why?—A. Yes; exclusive contract.

Q. With whom?—A. Alexander, as well as I can remember.

Q. What about North Little Rock? Do you know how many theaters are there?—A. Three.

Q. Did you contact those theaters from the year of 1940 to '45 with reference to screening film ads?—

A. Yes.

Q. Do you know approximately how many times you contacted—A. (Interposing.) I run some stuff on one. I contacted them quite a few times, I would say six, seven, eight times maybe.

Q. Are those three theaters chain theaters?—

A. Two of them are and one is not.

Q. Two of them are chains?—A. Yes.

Q. Did you say that you did screen some film ads there?—[173] A. In one house; yes.

Q. Was that on one of the chains?—A. No, independent.

Q. For what period of time did you screen there?—A. '41, I believe.

Q. 1941?—A. Yes.

Q. Did you screen any after that time?—A. No; I didn't.

Q. Did you try to screen any film ads at that theater after that time?—A. Yes.

Q. Were you able to?—A. No.

Q. Why?—A. Because they had an exclusive contract.

Q. Where did you get that information?—A. From this theater man, exhibitor.

Q. With whom did they advise you that they had—A. (Interposing.) As I remember, the Motion Picture Theaters out of New Orleans, Louisiana.

Q. Were you able to screen any ads with the two chains?—A. No.

Q. Did I ask you if you know what chain they belong to?—A. I don't remember whether you did or not. I think they [174] belong to Robb & Rowley, or it could be Lightman there. I won't be sure. Little Rock, the two theaters over there in North Little Rock—I believe it is Lightman out of Little Rock.

Q. Do you know whom you contacted with reference to screening ads there?—A. Manager of the theater.

Q. There in North Little Rock?—A. Yes.

Q. You know approximately how many times you contacted them?—A. Well, several times, of course. I was having a heck of a time. I would see him; I would ask him, talk to him.

Q. Were you ever able to screen any advertisements there?—A. No.

Q. Were you given any reason?—A. Yes. They had an exclusive contract with somebody.

Q. Did they say with whom?—A. Well, as well as I remember, it was one of the two. I wouldn't say which, Motion Picture Theaters, I believe.

* * * * *

[179] Q. Did you ever contact any theaters in Pine Bluff, Arkansas?—A. Yes.

Q. Do you know how many theaters are located there?—A. Well, I believe there was three that operates full time.

* * * * *

Q. How many times did you contact those theaters during the years 1940 to '45?—A. About three times.

Q. Do you know approximately the first time?—A. '40.

Q. Were you able to screen any ads there?—A. No.

Q. Could you make any arrangements about it?—[180] A. No.

Q. Why?—A. Exclusive contracts.

* * *
Q. Did your theater manager in Pine Bluff, Arkansas, advise you with whom?—A. One of the two, just like it is in all of those cases. I can't specifically say, and you come back next time and you come back and Motion Pictures has got it, one time, Alexander. I won't go on record as positively knowing who has those screens or who did have them any time. I can't [180] do that. It is one of the two firms. I

* * *
Q. What about El Dorado?—A. Same thing, two theaters.

Q. Do you know the name of them?—A. No; I don't. I take it back, three theaters in El Dorado.

Q. Chain or independently owned?—A. Two are chain and one is independent.

Q. Did you ever do any screening business with any of those theaters?—A. No.

Q. Did you ever contact them to see about screening?—A. Yes.

Q. When did you contact them, if you know?—

A. Last of '40 or the first of '41, as well as I remember.

Q. Do you know to whom you talked at the time?—

A. The manager of the theater.

Q. Did he advise you why?—A. Exclusive contract; yes.

[182] Q. With whom?—A. I can't tell you, either one, Alexander or Motion Picture Theater Advertiser Corporation.

Q. He advised that the first time that you contacted him?—A. Yes; that they was tied up with—first time I ever went in there, always been tied up.

Q. What about Magnolia?—A. Same condition in

Magnolia, two theaters, three—I am not sure whether it is two or three, all under one head.

Q. The first time that you contacted them, were you able to make any arrangements?—A. No.

Q. With reference to screening?—A. No.

Q. Any reason given to you by the party to whom you talked?—[183] A. Exclusive contracts.

Q. Who told you that?—A. Manager of the theater.

Q. Did he tell you with whom he had the exclusive contract?—A. He told me but I have forgotten which firm it was, Motion Picture Theaters or United or Alexander—I mean or Motion Picture Theater.

Q. You know how many theaters are in De Queen?—A. Only one theater in De Queen.

Q. Did you contact anyone there with reference to screening?—A. Manager of the theater; yes.

Q. Were you able to make arrangements for screening film ads?—A. No.

Q. Any reason given?—A. Exclusive contracts.

[184] Q. With whom?—A. Either one of the two firms.

Q. Which one?—A. Alexander or Motion Picture Theater Advertising.

Q. What about Nashville, do you know how many?—A. One.

Q. Did you ever screen any ads there?—A. No.

Q. Did you try to screen any?—A. Yes.

Q. Did you ever contact anyone there with reference to screening ads?—A. Yes; manager of the theater.

Q. Do you know approximately when that was?—

A. I would say about '41, '42; I am not sure on that time.

Q. Were you able to make any arrangements about it?—A. No; exclusive contract, Alexander or Motion Picture Theater.

[185] Q. What about Hope, Arkansas?—A. Three was when I was there; in '42, I believe I was there.

Q. Did you contact anyone there with reference to—A. (Interposing.) Yes; manager of the theater.

Q. Were you able to make any arrangements with him?—A. No.

Q. Were you given any reason?—A. Yes; exclusive contracts.

Q. With whom?—A. Alexander or Motion Picture Theater, I am not sure.

Q. What about Prescott?—A. Same thing.

[186] Q. Were you able to make any arrangements about screening?—A. No.

Q. Was any reason given?—A. Yes; so tied up with exclusive contract.

Q. With whom?—A. Alexander or MPA, Motion Picture Theater. I don't remember which one of them.

[189] Q. Were you ever able to get any screen advertising shown on the screens at the theaters in Stuttgart?—A. No.

Q. What about Hot Springs?—A. Same thing.
Mr. Cozad. What respondent?

By Mr. COLLINS:

Q. Did they advise you why you couldn't?—[190]

A. Exclusive contract.

Q. With whom?—A. Either Alexander or Motion Picture Theater; Alexander, I believe.

Q. How many theaters are in Hot Springs?—A. I contacted about four, as well as I remember.

* * * *

[192] Q. You know how many theaters are in Jonesboro, Arkansas?—A. Well, Jonesboro had two owned by the same man.

* * * *

Q. Were you able to screen any ads on those screens there?—A. No.

Q. Did you try to make arrangements?—A. Yes.

Q. At what time?—A. Well, in the fall of '40, I believe.

Q. Do you know whom you contacted?—A. Manager of the picture shows.

Q. Did he give you any reasons for not showing your film ads?—A. Yes; he said that he was tied up with a contract, exclusive contract.

Q. With whom?—A. Alexander or Motion Picture Theater.

* * * *

[196] FURTHER RE-CROSS-EXAMINATION

By Mr. BURGESS:

* * * *

[198] Q. As to all of these theaters, you have testified that in these various 24 theaters that you were examined about in Arkansas, they told you their contracts were exclusive with either Alexander or MPA; is that right?—A. That is right.

Q. As to any of those theaters, might it have been either one or somebody else other than Alexander or MPA?—A. I have never on any of them—have never had them to tell me anybody else unless it would be one of the two.

Q. Did each one of them specify when you talked to them whom they had an exclusive contract with?—

A. They had—would tell me; yes. I just don't recall about which way, about 50-50, about half was Alexander; the other half was Motion Picture.

* * * * *

[231] W. B. REICHART was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. COLLINS:

Q. Mr. Reichart, try to keep your voice up so the reporter can hear what you say, whether any of the rest of us do or not. Mr. Reichart, where do you live?—A. Baytown, Texas.

Q. And how long have you lived there?—A. Two years.

Q. Where did you live before that?—A. In Houston, Texas.

Q. In what business were you engaged?—A. Theater advertising.

Q. How long have you been engaged in that business?—A. Seven years.

Q. You began, then, in 1941?—A. 1941.

Q. And when you started in the film advertising business, did you start in by yourself, or were you employed by [232] someone?—A. I was employed in 1939 by Alexander.

Q. How long did you work for Alexander?—A. Approximately one year.

Q. What were your duties with Alexander?—A. Soliciting advertising from the theaters for Alexander.

Q. Did you make any contracts with the theaters?—

A. Yes, sir.

Q. For what purpose?—A. For taking good will, and any new theaters that were being put up, to secure or obtain contracts for Alexander so we could sell motion picture advertising.

Q. Now, after you left Alexander, what did you do?—A. I went in business for myself, selling motion picture advertising.

Q. Now, after you left Alexander, explain to us just the nature of your business, Mr. Reichart.—

A. The nature of my business was to obtain theater contracts from theater owners for the privilege of selling advertisers film advertising to be displayed on their screens.

* * * * *

[233] Q. Now, under what name were you operating at that time?—A. The Theatre Publicity Service.

Q. Were you conducting the business alone, or did you have employees?—A. I had employees.

[234] Q. Approximately how many?—A. Over a period of time, or a certain date?

Q. From the time you started on and through until you—did you say that you are still in the business?—

A. I still own the name—Theatre Publicity Service—but I am not operating physically at this particular time.

Q. How long have you not been operating?—

A. Since September 2, 1947.

* * * * *

Q. Could you tell us the territory in which you worked?—A. Texas, part of Louisiana, Kansas City, Missouri, and Kansas City, Kansas, and trade territories.

Q. Did you contact any of the theaters yourself, while [235] you were in business?—A. Yes, sir.

Q. And did you ever have any relationship with the Mitchell Lewis Theatres in Houston?—A. Yes, sir.

Q. During what period of time?—A. From 1941 up until 1945.

Q. What was the nature of your business with the Mitchell Lewis Theatres?—A. I had contracts on the screen to sell advertising to the merchants and exhibit the film advertising at these theaters.

Q. How many theaters did Mr. Lewis have?—A. To my best knowledge, five.

Q. And they were located where?—A. In Houston.

Q. Now, why did you stop showing films at the Mitchell Lewis Theatres?—A. I was told in 1945 that he had signed a contract with M. P. A.

Q. Who told you that?—A. Mr. Mitchell Lewis, himself.

Q. Who is M. P. A.?—A. Motion Picture Advertising.

* * *

[236] Q. Now, did you ever have any business relationship with the Jefferson Amusement Company?—

A. Yes.

Q. Is that a chain of theaters or one?—A. It is a chain.

Q. How many theaters?—A. Forty some odd.

Q. I beg pardon?—A. Forty some odd.

Q. Where are they located?—A. In East Texas, Louisiana, and South Texas.

Q. Did you ever have any film advertisements screened on the screens of the Jefferson Amusement Company theaters?—A. Yes, sir.

Q. For what period of time?—A. Two or three weeks at a time.

[237] Q. Well, when did you begin?—A. In '44 or '43 with Jefferson.

Q. Now, do you recall how many theaters of that chain you screened advertisements at?—A. I think it was only two or three.

Q. Only two or three. Now, when did you say that you stopped—in what year? A. In 1945.

Q. Now, can you tell us the reason you stopped?—A. The reason I stopped was because M. P. A. had the contract.

Q. Where did you get that information?—A. From the Jefferson Amusement officials.

Q. Located where?—A. At Beaumont, Texas. Sam Landra is his name.

Q. And what was his position with the Jefferson Amusement Company?—A. Vice president.

Q. And how did you contact him—by mail, or how?—A. I contacted him by telephone.

Q. By telephone. And, do you recall what the conversation—[238]tion was—what you said to him?—A. Not word for word, but I remember that I did have some film to show at some of their theaters in the Tri-Cities and he told me he was sorry, he couldn't show them, I would have to take it up with M. P. A., because he had given the contract to M. P. A.

Q. I believe you said that you are not in the film advertising business now?—A. I am not active in it.

Q. Why aren't you actively in it, Mr. Reichart?—A. I did not have enough theaters to make any money.

Q. You did not have enough theaters?—A. No.

Q. Have you tried to get the theaters?—A. Not in the last year, because I was aware of the contracts—being a tradesman and in the business, I was aware of these contracts, and I felt the contracts were vital.

[239]

CROSS-EXAMINATION

By Mr. ROSEN:

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Q. As I understand it, sir; there are three important phases to this business—see if I am not correct? One is the securing of advertising contracts from advertisers; second, is the production of the advertising films to be displayed, and third, is the securing of screen privileges from theaters whereon the films are to be displayed for the benefit of the advertiser? Is that correct?—A. That constitutes the business, but I would say the number one subject would be the securing of the theater.

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[242] Q. Mr. Reichart, is it not a fact that in your experience in this business, all of the theaters limit the amount of screen advertising to be displayed on their screens?—A. Yes.

Q. Why so?—A. Because with too many screen ads it has been proven that it annoys the paying customers who pay to get in the theater, not to see the ads but to see the picture itself, and the prime interest of the theater man is not to display advertising but to exhibit motion pictures.

Q. Does that limitation on the part of the advertising films carry with the different theaters involved?—A. Yes; each owner will have a right to make up his mind which will be and which will not be the definite amount of advantage.

Q. Would you say it will run, on the average, about four films per performance?—A. It has been proven over the years that the average theater would like to have no more than four.

[243] Q. In the cases where a theater undertook to make a theater screen agreement with more than one

distributor at the same time, wouldn't it be probable that the distributor would be shipping in films to be displayed after making contacts with the advertisers for the display of the film, after producing or having produced for it the film and then find that the other distributor or others with theater screen agreements had filled the screen so that those films could not be displayed that week, or that performance?

[244] A. I would say, from my experience over three years, which are seven or eight, that it is disadvantageous to every one concerned.

Q. For what?—A. For a position to exist where a theater has more than one contract with distributors unless that theater specifies in his contract that the distributor who obtains the contract with the theater will only be allowed so many ads per week and the dates specified.

Q. As I understand your answer, you stated that your experience in the industry has led you to believe that it would be disadvantageous for all concerned—meaning everybody—the theater and the distributor?—A. And the advertiser, because he would be wanting his ad on the screen and he could not get it on there after he had bought it, in fact.

[246] Q. Similarly, would it not be disadvantageous to the particular distributor who had expended the effort of selling the advertising, made up the films, paid the advertising commission, and then found that he could not have those films displayed in a particular performance or a particular week?

A. Under those circumstances, if that distributor would be working, I would say that would be at his own risk.

Q. It would be at his own risk, but undoubtedly in some cases he would conflict with others and could not get the advertising display at the time he wanted.—A. It would be free enterprise—that would just be the chance he would be taking.

Q. I asked you a question, though, Mr. Reichart, whether it would be disadvantageous to the distributor in [247] such circumstances?—A. I beg your pardon.

Q. I understood you to say that it was disadvantageous in your opinion, to all concerned. I was trying to show the practical difficulties of doing business in the way the Government suggests it be done.—A. I say it would be a disadvantage to the distributor; yes.

* * * *

[250] Q. I notice that you stated that in connection with the Jefferson Amusement Company, which had forty theaters, that [251] you exhibited motion picture advertising in three of the forty—did I get you right?—A. That is correct.

Q. Did you ever undertake to try to sell the Jefferson Amusement Company on the other thirty-seven?—A. Yes.

Q. Had you already sold advertising for those thirty-seven theaters?—A. No.

Q. What kind of a contract was it you tried to obtain from that concern—the circuit?—A. I tried to obtain any sort of a contract, on a per ad basis or a guarantee.

Q. And they let you exhibit advertising in three, but not in the other thirty-seven?—A. At the time that I was allowed to exhibit this advertising, the

Jefferson Amusement Company had consummated their contract with Alexander, who previously had the contract before M. P. A., and the time that I exhibited was time elapsed between the Alexander contract and the M. P. A. contract. At that time, it was just a matter of courtesy, that they would allow any one to run an ad on their theater.

Q. Did you ever make an attempt to secure screen privileges with that circuit after you saw Alexander's contract [252] had expired?—A. Yes.

Q. For the whole circuit?—A. Yes.

Q. But not offering to pay them any guarantee for the whole forty theaters?—A. Not as much as they wanted.

Q. Not anything?—A. Yes.

Q. What was the basis you offered?—A. Three dollars per ad basis for all their theaters with a guarantee of three and an option for four.

Q. State that again. Now, repeat that for me as to what your guarantee meant, so I will understand it.—

A. I would guarantee three ads per week per theater, with an option to put one or more ads, which would make four which they would take, and pay at the same rate, or \$3.00 for the additional ad, and the total would be \$12.00 per week per theater.

Q. And that was the minimum, whether you sold any more or not?—A. Yes.

Q. For the whole circuit of theaters?—A. Yes, sir.

Q. What did they want?—[253] A. \$7.50.

Q. You were not willing to meet that?—A. No, sir; I was not willing to meet that.

[255] Q. Mr. Reichart, in the cases in which you have tried to secure screens for your own company, is it or is it not a fact that Alexander has been in

competition with you for the obtaining of those screens?

A. Yes.

Q. Is it also true that M. P. A. has been in competition with you for the obtaining of those screens?—

A. Yes.

Q. Is it also true that all three of you have been in competition with each other for those screens?—

A. To the best of my knowledge, it is true.

Q. Have you ever had occasion to offer M. P. A. advertising which you had obtained for exhibition on theater screens under [256] contract to M. P. A.?—

A. Yes.

Q. Have they refused to exhibit the films?—A. Not when possible.

Q. By that, I assume that you mean that when the theater screens were filled up for the particular time you wanted, they refused, but at other times, accepted the advertising?—A. I would leave it to their integrity and the fact that they did not have the space—outside of that, I would not know if they were trying to keep me off.

Q. Weren't there numerous times when they accepted the advertising?—A. That is right.

Q. And only the exceptional case was when they turned it down?—A. That is right.

Q. And those cases, when they turned it down, they told you it was because their theater screens were filled?—A. That is correct.

Q. And in the cases in which they did exhibit the advertising that you wanted exhibited, you were paid the customary commission, were you not, of 15 percent less 2 percent discount—I should say, plus the

2 percent discount?—A. I was allowed that commission.

Q. Isn't that the usual advertising commission in the indus [257] try?—A. That is the usual advertising commission in the industry.

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REDIRECT EXAMINATION

By Mr. COLLINS:

* * * * *

[259] Q. I understood you a while ago, Mr. Reichart, to answer Mr. Rosen that these contracts with the theaters were advantageous to the distributor and about what distributor were [260] you speaking when you said they were?—A. They were to the advantage of the distributor who has the exclusive contract.

Q. Were they of any advantage to the distributor who did not?—A. Absolutely not.

Q. And to whose customers or to what advertisers were they advantageous?—A. They were to the advantage of any advertiser who had been contacted by one who held an exclusive contract.

Q. Were they of any advantage to the advertiser or prospective advertiser or the distributor who did not have the contract?—A. They were a disadvantage to him.

Q. Now, was it advantageous to you, as a distributor, to have to go through the holder of the exclusive contract to get your advertising screened?—A. That was a disadvantage and a loss of profit.

Q. A loss of profit to whom?—A. To me.

Q. Was it an advantage or a loss to the advertiser?—A. No.

Q. It was neither?—A. No.

Q. Mr. Reichard, when you were unable to get advertising [261] films screened on the theaters because of the existence of an exclusive contract, was that an advantage or a disadvantage to the film company from whom you obtained your films?—A. Yes.

Q. Yes—what?—A. Yes; it was a disadvantage—they would not get to sell the film.

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[268] ROBERT WEIGAND was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. COLLINS:

Q. State your full name, please.—A. Robert Weigand.

Q. Mr. Weigand, what connection, if any, do you have with the Commerce Picture Sales, Inc.?—A. Vice President.

Q. How long have you been connected with Commerce Picture Sales, Inc.?—A. Since its beginning, August 1941.

Q. And what is the nature of the business of the Commerce Picture Sales, Inc.?—A. The production and distribution of motion pictures for advertising and some other purposes.

Q. Now, in connection with the production and distribution of advertising films, just what does the Commerce Picture Sales, Inc. do?—[269] A. Well, we produce a library of films for the use of advertisers in a general way. We contact theaters for the privilege, and obtain from the theaters the privilege of exhibiting advertising films on the theater screens.

And then, we contact the advertisers and obtain contracts with these advertisers for the purpose of rendering a service of exhibiting the films on the

theater screens with whom we have contracts or other agreements permitting us to do that.

We do other production to render the service distinctive to the advertiser.

Q. In what territory does the Commerce Picture Sales, Inc. operate?—A. Our production takes place in and close to the city of New Orleans.

Our theater contracts and distribution, that sales efforts take place in Louisiana, Mississippi, Oklahoma, Arkansas, Alabama, and Florida, either directly through our own salesmen or indirectly through a distributor.

Q. Now, when you say indirectly through a distributor, do you have more than one distributor?—

A. We have only one distributor at the present time.

* * * * *

[273] Q. Before you began activity with the Commerce Picture Sales, Inc., what were you doing, Mr. Weigand?—A. Well, there was a period of about two years where I was operating Commerce Pictures Corporation. Prior to that I was in the employ of Motion Picture Advertising Service.

Q. And that was when?—[274] A. Approximately, 1934 to 1939.

Q. Now, during the time that you were in the employ of Motion Picture Advertising Service, Inc., what were your duties?—A. I was Sales Manager in the city of New Orleans.

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[279] CROSS-EXAMINATION

By Mr. ROSEN:

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[280] Q. Just for the sake of the record, would you mind explaining what is a library film.—A. Well, a

library film, from my understanding, is a film that can be used by several advertisers when it has been added to by a commercial ending, identifying it with a particular advertiser.

Q. Am I to understand that that is a film which would be useful in a certain line of business like a drug business or maybe a dry goods business or some similar business and by adding the name of the advertiser where you advertise the subject matter. It is general and can be used for more than one advertising?—A. That's right.

* * * * *

[285] Q. Is your company and your distributor in open competition with the Motion Picture Advertising Service Company in securing screen privileges from theaters in the territory that you testified of?

Mr. COLLINS. I object to that.

Trial Examiner KOLB. What do you mean, open competition? Strike the word, "open".

Mr. ROSEN. I mean competition.

Mr. COLLINS. It is my understanding that the fact [286] should go in and that it is up to the Commission to determine whether or not that constitutes competition.

Trial Examiner KOLB. I overrule the objection.

The WITNESS. In answer, there are two ways of obtaining contracts. One is nonexclusive contract and another is an exclusive contract. In the case of an attempt for an exclusive contract, there is competition.

By Mr. ROSEN:

Q. I take it from your answer that your company and your distributor attempts to secure exclusive contracts from those theaters who are willing to

make contracts with you.—A. Our policy is to make nonexclusive contracts wherever possible, and it has been, from the beginning of our business, we have been forced in several defenses to make some—that is, our distributors have been forced in several defenses to make some exclusive contracts in order to be able to have some theaters in which to exhibit films.

Q. You say your policy originally was to make nonexclusive contracts with the theaters?—A. Yes, sir.

Q. Now, you try to have exclusive contracts because you are forced to do that by your competitors?—

A. Not only now. In fact, our present distributor, Exhibitors Advertising Company, has found it necessary to make exclusive [287] contracts in order to be able to obtain enough business to stay in business.

Q. Isn't it a fact, within your knowledge and experience, that theaters limit the amount of screen advertising that can be shown on the screen in any given performance?—A. There is usually a limitation, not only on the part of the theater but on our own side of the question. We don't wish ourselves to exhibit more than a given number for the reason that it is obnoxious to the audience and represents a lesser value to the advertiser.

Q. On the average, what would you say that limitation was?—A. Well, in practically all contracts, the limitation is six or at the most eight advertising units in any given theater performance.

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[295] RENE P. KARRIGAN was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. COLLINS:

Q. Give your full name and address.—A. Rene P. Karrigan, 525 Poydras Street, New Orleans, Louisiana.

Q. Mr. Karrigan, in what business are you engaged?—A. In the business of production and distribution of motion pictures.

Q. Under what name are you operating?—A. Commerce Picture Sales Corporation.

Q. And how long have you been engaged in that business?—A. Commerce Picture Sales Corporation has engaged in this business since 1941.

Q. And how long have you been engaged in it personally?—A. Since 1932.

Q. And were you working for yourself or were you employed by someone prior to 1941?—[296] A. Prior to 1941, I was employed by the Motion Picture Advertising Service Corporation of New Orleans.

Q. And how long did you work for Motion Picture Advertising Service Corporation?—A. 1932 to 1941.

Q. And then you—A. Formed the Commerce Picture Sales Corporation.

Q. And you have been operating that business ever since?—A. Ever since.

Q. Now, is that a corporation?—A. Yes, sir.

Q. That's the one in which Mr. Weigand is connected, isn't it?—A. Yes, sir.

Q. Mr. Weigand is the man who testified on yesterday in this case?—A. That's right.

Q. Now, Mr. Karrigan, what is the nature of your work with the Commerce Picture Sales, Inc.?—A. The nature of the business or the nature of my own individual work?

Q. The nature of the business and then, also the nature of your own work.—A. The nature of our business is to produce and distribute motion picture advertising services, through theaters and also [297] we produce motion pictures of an educational or you might say entertainment value to private accounts who wish to have them produced.

My own individual job is Sales Manager, handling sales and theater contacts for the Commerce Picture Sales, Inc.

Q. The theater contacts, what do you mean by that?—A. In cases where we have to ship to theaters, which is the nature of our business. In other words, after we have made a contract through ourselves or through one of our distributors, it is our job to service the films to the theaters and it is my job to keep those contacts going so that the service flows in a smooth and even manner without interference.

Q. I believe also that part of your duties is to sell the advertising to the advertisers, is that right?—

A. That's correct, or to instruct salesmen to do the job or to help distributors to do the job.

Q. Mr. Karrigan, have you ever had any film ads on the screens of the theaters belonging to Jefferson Amusement Company?—A. We had a test run in one theater of Jefferson Amusement Company, which was done without charge.

Q. And you have never had any paid ads?—A. No, sir.

Q. Did you ever attempt to have any?—A. Yes, sir.

[298] Q. When was that?—A. I couldn't say definitely but I believe it was sometime in 1944 or 1943. I could refer back to my records and give you the exact date.

Q. 1943 or 1944?—A. That is merely a guess.

Q. And who did you contact?—A. My contact was Mr. Sam Handum at Beaumont, Texas.

Q. Beaumont, Texas?—A. Yes.

Q. Where did you contact Mr. Handum?—A. At his office.

Q. Did you relate to us—strike that—can you relate to us what was said by you and Mr. Handum on that occasion?—A. Well, that is a long time ago. It would be pretty difficult to recall the exact conversation, but the general thought was to solicit his screens for the use of Commerce Picture Sales Corporation for the sale of advertising for advertisers in his various towns where his theaters are located.

Q. And upon that solicitation, did you get any reply from Mr. Handum?—A. After several visits, we had a reply to me personally that a deal had already been made regarding the screens and in that, the conversation with us ended.

Q. Did Mr. Handum on that occasion tell you with whom the [299] Jefferson Amusement Company had made a deal with reference to screen advertisements?—A. Yes, sir; he told me that he made a contract with the Motion Picture Advertising Service Corporation of New Orleans.

Q. Now, Mr. Karrigan, did you ever have any film ads on the screens of the Delta Theaters?—A. I was trying to make an arrangement with the Delta Theaters. As a matter of fact, they gave me a verbal arrangement and I shipped the film and the film was returned with instructions that they had made arrangements after they talked with me and decided not to run my service.

Mr. COLLINS. Mr. Examiner, at this time, I would like to have marked for identification Commission's Exhibit 19, a photostat of a letter written on a letter-head of the Delta Theaters and addressed to Com-

merce Picture Sales, Inc., New Orleans, Louisiana, and signed Mrs. W. L. Paternostro, Delta Theater. The letter is dated November 28, 1944.

(The paper referred to was marked Commission's Exhibit 19 for identification.)

By Mr. COLLINS:

Q. Mr. Karrigan, I hand you a document which has been marked for identification as Commission's Exhibit 19 and ask if that is the communication about which you just now spoke?—A. Yes, sir; this is a letter that came into our office.

Mr. COLLINS. Mr. Examiner, we desire to introduce that [300] as Commission's Exhibit 19.

Trial Examiner KOLB. There being no objection, the letter will be admitted as Commission's Exhibit No. 19.

(The paper referred to, heretofore marked for identification Commission's Exhibit 19, was received in evidence.)

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[304] Q. Now, Mr. Karrigan, I believe you were present yesterday and heard Mr. Weigand testify, were you not?—A. Yes, sir.

Q. You heard him testify with reference to the Motion Picture Advertising Company screening film ads for the Commerce Picture Sales, Inc., did you?—A. Yes, sir.

Q. Now, what was the arrangement that the Commerce Picture Sales, Inc., had with M. P. A. with reference to screening film ads for Commerce Picture Sales, Inc.?—A. You say, what was the arrangement or what is the arrangement?

Q. Well, is and was; why do you say is?—A. Well, the present arrangement goes back about three or four years. And the permit is strictly a verbal agreement

which permits Commerce Picture Sales Corporation to display advertising on the screens held exclusively by Motion Picture Advertising Service Company and we receive an agency commission.

That same thing applies in reverse in the Motion Picture [305] Advertising Service Company desires to place their films on the screens operated by our distributors, why we give them the same privileges and allow them the same rate of commission.

Q. Now, you say you allow the same rate of commission?—A. That's right, sir.

Q. Now, when you have films screened on screens controlled by M. P. A., do you receive more or less money for such service than you do for services when the Commerce Picture Sales, Inc. makes an arrangement with the theaters independently?—A. We receive less.

Q. You said this arrangement began about three years ago. What was the arrangement prior to that time?—A. There was no arrangement prior to about three or four years ago. I don't know the exact date that we started the arrangement. I would have to refer to my records, but there was no arrangement at the beginning, the first two, or three years we entered the business.

Q. And before that arrangement, about which you testified, was made, were you able to have films screened on the screens of theaters controlled by the M. P. A.?—A. Well—

Mr. ROSEN. I object to that on the ground that the issue before the Commission is the present condition that exists and no useful purpose would be served in trying to show some practice which is no longer existing or is one of the [306] charges made by the complainant against this respondent; that the refusal to exhibit on screens under exclusive contract, advertising of other distributors or other film companies.

The witness has stated with respect to his company that the arrangement is now and for the past three years has been to the mutual reciprocal benefit; each exhibiting advertising films for the other.

I don't believe that the Government is able to prove the charge by showing what happened three or four years ago and what has been discontinued since that time.

Trial Examiner KOLB. The motion will be overruled, as matters that are material show general background.

The WITNESS. No, sir.

[307]

CROSS-EXAMINATION

By Mr. ROSEN:

Q. When you first went into this line of endeavor as an employee of M. P. A., did theaters at that time give exclusive contracts to the distributors?—A. Yes.

Q. Some gave exclusive contracts and some gave nonexclusive contracts?—A. Correct.

Q. To several distributors?—[308] To restate my question for the record, some theaters gave exclusive contracts to one distributor and other theaters gave nonexclusive contracts to several distributors?—

A. That's correct.

Q. And on some occasions, some theaters gave non-exclusive contracts to one distributor alone, isn't that true?—A. To my knowledge, I don't know of any theater where nonexclusive contracts were in existence where they are not more than one type of service running for more than one distributor.

Q. Is it your statement then, that in all cases in which theaters made nonexclusive contracts, they

entered into those contracts with more than one distributor at the same time?

The WITNESS. What the theater did in the way of contracts, I wouldn't know.

By Mr. ROSEN:

Q. You mean in 1932?—A. When I first went into this business or any time—are you asking me to determine whether the theaters which were [309] non-exclusive gave contracts to all distributors.

That I couldn't say. I did say that to my knowledge every theater who held a nonexclusive contract had more than one service on its screen.

What contracts they had with other companies, I couldn't testify to because I didn't sit in the offices of the theaters when the contracts were made.

Q. Well, take the present situation. Now, you, as part of your duties for your corporation, are engaged in the business of securing screen privileges from theaters, is that right?—A. That's right.

Q. Is there a contract which you have on your books right now or one of your distributors on his books right now which does not contain an exclusive clause, but in which the theater does business with you or with your distributor alone and has no contract with other distributors. Is my question clear?—

A. In other words, you are asking me if I have any contracts in my office in the name of Commerce Picture Sales, Inc., or in the names of our distributors which are nonexclusive?

Q. In which you alone—A. In which we alone run the service?

Q. In which you alone have a screen agreement with the theater?—A. That again I couldn't answer. In other words, my contract [310] that I have tells

me that I can run service but I can't state whether the theater has other contracts.

Q. Well, can you state this much for the record. In the cases in which you have nonexclusive contracts, are other distributors permitted by the theater to ship in films without contacting you and have those films screened?—A. Sure.

Q. In every case where you have a nonexclusive contract?—A. Sure.

Q. What was the practice in regard to the operation under that contract?—A. The actual practice is that our salesmen will go and sell ads and perhaps he will, at the same time, meet other salesmen who will sell ads on the same screen.

Q. Well, there are some cases in which more than one will go into theaters and screen films at the same time?—A. Yes; many cases.

Q. So, that the only cases in which the theaters will not accept film advertising from other distributors insofar as your company is concerned, are those cases in which your company or distributors hold exclusive theater screen agreements?—A. Well, that is the way the contracts are more or less drawn up. However, we have found from experience that in a great many cases, the theaters don't live up to those contracts [311] even though they have given us exclusive privileges.

We have found that other film companies have placed ads on the screens of our exclusive theaters.

Q. Are those cases in which you have films on the screens?—A. In cases where we have full screens, we have found our competitors running service.

Q. You mean the theaters in those cases just breach that clause in the contract?—A. That's right.

Q. But the screen—will you have exclusive contracts on your films—only your films are authorized

to be shown on the screen, isn't that true?—A. That is the way the contract is shown.

Q. Only in exceptional cases would the theater breach the contract?—A. That's right.

* * * *

[316] Q. In the competition among the distributors for theaters screen agreements, minimum guarantees are resorted to on occasions in order to induce the theater to make an exclusive contract; is that right?—A. That's correct.

Q. In such cases the distributor who has the exclusive privilege must pay the guarantee whether the films are screened or not?—A. That's correct.

* * * *

[317] Q. The arrangement that your company handles with M. P. A., they allow you the agency commission, I understand you to say. What amount is that?—A. Fifteen percent.

Q. Is that the standard or usual rate allowed throughout the country to advertising agencies?—A. Correct.

Q. That is the same rate that you allow them when they book through you?—A. That's right.

Q. Has there been any change that has taken place from 1932 to the present time with regard to securing of theater screen agreements, with regard particularly to the question of exclusive clauses in the contract?—

A. Well, that I don't know. I could only guide myself in accordance with the way we make contracts with the theaters that we do business with. But what our competitors do is beyond our knowledge; whether there has been any change in the way the contracts are made we wouldn't be able to state.

Q. Well, let me ask you first when you first worked for M. P. A., that company and competitors of that

company obtained exclusive contracts from theaters sometimes and non- [318] exclusive sometimes, in 1932, didn't they?—A. That's right.

Q. And that condition has not changed from 1932 to the present time, is that right?—A. You mean the condition of making contracts?

Q. In some cases, theaters make exclusive and others nonexclusive.—A. That condition still exists.

Q. When you go in yourself to negotiate a theater screen agreement, do you attempt to make it on an exclusive basis?—A. No, sir.

Q. Do you have any exclusive contracts?—A. Not in the name of Commerce Picture Sales Corporation.

Q. In the names of your distributors?—A. They have.

Q. They have exclusive?—A. That's right.

Q. Don't you direct them—their policies in connection with that?—A. No, sir; they handle their own theater connections.

Q. So that while your distributors at the present time do have some exclusive contracts, your practice in getting screen privileges for your own company is to take nonexclusive contracts?—A. That's right.

[319] Q. Do you have any exclusive contracts?—A. No, sir; not in the name of Commerce Picture Sales Corporation.

Q. Well, I was trying to draw any fine distinction between your company and your distributors. What is the significance to the last answer, not in the name of—A. Well, the question of exclusive contracts during the course of this hearing has been along the lines of how many exclusive contracts do we hold, and our answer has been none; that they are held by our distributors and I want to keep that point clear.

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Q. Mr. Karrigan, you say that your practice is to obtain nonexclusive contracts, whereas your distributors' practice is to obtain exclusive?—A. I did not say that. Our practice is to try to obtain non-exclusive contracts, and our distributors have some exclusive contracts.

* * * * *

[320] Q. In the case of a nonexclusive theater contract, how do the various distributors who have contracts with the theaters, assert when they go out to sell advertising, when the ads will be shown in the theater?—A. I don't know how the other distributors assert that fact.

Q. How do you do it?—A. We determine from the theater before we start selling what space is available and I say, as they go to work to sell, they report those ads to the theater and the theater is posted as to what to expect and he knows he has allocated those spaces and he runs it.

Q. Well, that condition as to how many films are booked through that theater changes from day to day as advertising is sold, does it not?—A. It could.

Q. So, if you have learned—if you did learn from a theater with whom you have a nonexclusive theater today that there were three spaces available next week and you went out to him to sell the ads, maybe the condition would change?—[321] A. Well, usually when the theater tells us that there is some space available, he is just as anxious to get those ads on the screen as you are to sell them.

* * * * *

[322] Q. You testified with regard to the Billy Fox Theaters. I understand one is the Fox Theater in Bunkie and one was the theater in Marksville.—A. Yes, sir.

Q. Who has the screen agreements with those theaters at the present time?—A. The Exhibitors Advertising Company.

Q. That is your distributor?—A. That's right.

Q. Is that contract exclusive or nonexclusive?—

A. At the present time it seems to be a very non-exclusive contract because we have just recently checked and found competition.

[323] Q. What does the contract read?—A. The contract reads exclusive.

Q. When your distributor got the contract, isn't it a fact that the owners had already entered into a contract with Motion Picture Advertising Sales; they breached the contract and then turned it over to your distributor?—A. That I wouldn't know; I did not make the contract myself.

Q. Who are your competitors for screen rights in this territory?—[324] A. Well, the Motion Picture Advertising Company, the Alexander Film Company and every now and then someone from out of town that might come in from some other area with special deals.

[330] Q. At the present time, you have, as you testified, an arrangement with M. P. A. under which you book some films in theaters on screen agreements with them and they book some with theaters on screen agreements with you or your distributors?—A. That's right.

Q. The result of that is that you are able to obtain for your advertisers distribution in more theaters than if you exhibit those films in the theaters under contract to you alone?—A. Not in all cases.

Q. What is the exception?—A. Well, some exceptions are when we request the theaters [331] and they

reported as being full, which cuts out our customers of distribution for that area.

Q. Give me an illustration of that?—A. I will give a specific illustration right here in the city of New Orleans where we asked the Carrollton Theater for a customer and were told that it was full.

Q. By whom?—A. By the Motion Picture Advertising Service Company, and later on we found that our customer was given the Carrollton Theater on a direct contract.

* * * *

[332] Q. Mr. Karrigan, counsel asked you if you were not able to have your ads screened in more theaters by having access to the theaters controlled by M. P. A. Does the existence of exclusive contracts between M. P. A. and the different theaters give you and your distributors a wider distribution of your advertising films?—A. To a certain extent.

Q. It does?—A. To a certain extent.

Q. So the exclusive contract is no hindrance to your business?—A. Other than the fact that there is no profit in the booking.

* * * *

[340] NOBLE C. CAMPBELL was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. COLLINS:

Q. Mr. Campbell, would you state for us the nature of your business?—A. I am distributor of Parrot Films, Des Moines, Iowa. I sell advertising, screen advertising to the business firms, collect for it, order it made and shipped direct to the customer.

Q. Do you or do you not make any arrangements with the theaters for displaying?—A. In each case I

make a written contract to run a certain length of time, whatever time that may be.

Q. Do you make that arrangement before or after you have contacted the advertiser?—A. I make that before. The first thing I do when I start [341] working a town I call on the theater and make a contract. Otherwise I don't work the town.

Q. Then after you have sold the advertising to the advertiser, from where do you obtain your films?—A. I send the orders into Parrot Films, Des Moines, Iowa, and they ship direct to the customer.

Q. Now, what territory do you cover, Mr. Campbell?—A. Well, of recent years it is Virginia, West Virginia, North Carolina, South Carolina, Kentucky, and three spots in Indiana.

Q. How long have you been engaged in this business?—A. Well, I have been in this business approximately 18 to 20 years. I have been with Parrot Films 12 or 15 years.

Q. Mr. Campbell, did you ever transact any business with any theaters in Charlotte, North Carolina?—

A. At where?

Q. Charlotte, North Carolina.—A. Not in Charlotte, North Carolina; no, sir. I have contacted the home offices of two chains in Charlotte, North Carolina.

Q. What were the names of those two chains?—

A. The Kinsey Amusement Company. That is not exactly the right name. I'll have to look it up again, and the Everett Amusement Company. That was the Wilkie Kinsey Amusement Company.

[342] Q. Where are their theaters located?—A. They are scattered all over North and South Carolina and Georgia.

Q. Did you say that you did or did not do business with the Wilkie Kinsey Amusement Company?—A. I did not. I failed to make a contract.

Q. When did you contact them?—A. In recent years I would say I contacted them three or four times over a period of six or eight years.

Q. And were you advised of the reason that you could not do business with them?—A. Yes; you mean the Kinsey people?

Q. Yes.—A. They had an exclusive contract with Alexander.

Q. Anyone else?

MR. ROSEN. I object to that on the grounds it is leading and suggestive. The witness has answered the question.

TRIAL EXAMINER KOLB. The witness may answer the question. Was anyone else mentioned besides the Alexander Film Company in your discussions with the Kinsey chain?

THE WITNESS. No, sir.

By MR. COLLINS:

Q. Did you ever do any business with any theaters in Nashville, Tennessee?—A. No, sir; I never have. I have tried to contact them. [343] I never did meet him. The Tennessee and Western Kentucky area is pretty much tied up and some parts of Georgia is pretty much tied up with the Sudecum Chain in Nashville and I have never called on their home office, but their managers have told me that they had exclusive contracts with either Alexander or M. P. A.

Q. Now, do you know how many of the theaters you contacted in that chain?—A. Not too many. I made a circuit in Western Kentucky.

Q. You did what?—A. I made a circuit in Western Kentucky two or three years ago and didn't make a single contract because they were all Sudecum Theaters, you know.

Q. Sudecum Theaters?—A. That is right, and they couldn't do any business:

Mr. COLLINS. I think that is all.

CROSS-EXAMINATION

By Mr. ROSEN:

[344] Q. The headquarters of the Sudecum Theaters, you said, was in Nashville, Tennessee?—A. That is right.

Q. And your testimony with regard to that chain given a moment ago was based on what you say the manager of one of their theaters gave you?—A. No; several of them.

Q. Had you ever been to see one of the heads of that Sudecum Chain?—A. No.

Q. You made no attempt to secure the screen privileges for that circuit?—A. Yes; I did.

Q. Who did you see?—A. Various managers in the towns.

Q. The individual theater operated by that manager?—A. No; some Sudecum Chain operates and their associates operate perhaps 200 theaters or maybe 300 theaters. In fact, in Tennessee, see, they have so far as I know every good [345] town tied up by Sudecum Theaters.

Q. How many managers did you speak to?—A. Oh, I would say—

Q. Just approximately?—A. Well, I'd say easy 10 or 12.

Q. Located in different towns?—A. Different towns.

Q. You mean you spoke to these managers with respect to getting a screen privilege for that particu-

lar theater operated by that particular manager?—

A. That is right.

Q. But no attempt was made by you to cover the whole chain of the Sudcum circuit by a screening agreement covering all [346] of their theaters?—A. No.

Q. Because you were not prepared with your limited organization to sell advertising in all of those towns, were you?—A. Yes.

Q. Sir?—A. Yes; I was prepared to sell them.

Q. In Tennessee?—A. Yes.

Q. What organization, if any, did you have to sell advertising in Tennessee?—A. I didn't have any organization but I have the rights to go into Tennessee and operate the same as I do in North Carolina, or Tennessee, or Virginia.

Q. You mean that your agreement with the Parrot Film Company permits you to go in there if you want to?—A. My agreement with Parrot Film Company permits me to go everywhere east of the Mississippi River with the exception of Ohio and Michigan.

Q. My question was this, that once you have secured the right from the theater of screening films, then you said the next step was you would go in and sell the advertising?—A. That is right.

Q. Well, had they given you all the theaters in Tennessee, it would have then become necessary for you to go into those [347] towns and sell advertising in Tennessee, wouldn't it?—A. That is right.

Q. Did you have any organization prepared to handle that work?—A. I didn't have any but if I could have booked Tennessee I could have easily.

Q. Built up one?—A. Yes.

Q. You would have then organized some sales force to go into those towns?—A. That is right.

* * * * *

[349] Q. I understood you to state that your method of doing business was to first contact the theater and get the right from the theater to exhibit the film and thereafter, if you got it, to go out and sell the ad?—A. That is right.

Q. Now, I want to ask you something about that, because I am [350] ignorant on this subject.—A. O. K.

Q. When you would go into any theater and then get the right to exhibit and film that, how long would that right exist, for one day, one week, or one year?—A. That would be up to the theater.

Q. Generally, give me a general case?—A. Generally four weeks is my system.

Q. Four weeks?—A. Yes.

Q. So that you would go into the theater and get a right from them to exhibit some films for four weeks?—A. That is right. Then I would call on that theater three or four times a year. In other words, in place of running continuous I would run a month and off two or three months.

* * * * *

[356] Q. Then, according to your testimony, Mr. Campbell, you make these arrangements for four week intervals?—A. That is right.

Q. And then when you get through with that four week interval you have to go back to that theater to get another commitment for the next four weeks?—A. That is right.

Q. So that with regard to those theaters that do business with you, you have to repeat your contract 13 times a year?—A. No.

Q. I mean 12 times a year?—A. No; about four times a year.

Q. Well, I say 4 weeks into 52 weeks is 13, isn't it?—A. No; I run a contract for four weeks starting on August 1, we'll say, that runs up four weeks during

the month of August, which is practically the last day of August, and then I am out September, October and usually November.

Q. Why are you out those three months?—A. Because that is my way of doing business. In place of running continuously, my theory is that continuous advertising becomes monotonous to the public and we are on four weeks and we are out for three months. We give them a rest and then we come on with something entirely different.

Q. Let me ask you a question about that. Suppose you went [357] into a theater that was willing to write any kind of an arrangement you wanted. I understand that your policy is that you would run for one month and then be off for three months?—A. That is right.

Q. That is your way of doing business?—A. That is right.

* * * * *

[360] Trial Examiner KOLB. Mr. Campbell, in your testimony with reference to your experience with competitors in which the Alexander Film Company was mentioned, was your experience with the Alexander Film Company, or their competition any different from that of the M. P. A. when you ran into it in certain theaters?

The WITNESS. No different except that I have not run into M. P. A. or the Kansas City outfit very much. In other words, in my territory I don't know much about them. I have run into them and the theory is the same. They sign up contracts with theaters exclusive wherever possible, but they have not bothered me so much as Alexander. Alexander is the only outfit that has ever bothered me to any extent.

* * * * *

[366] REID H. RAY was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. HODGSON:

Q. Your name?—A. Reid H. Ray.

Q. Your occupation?—A. President of Reid H. Ray Film Industries.

Q. Reid H. Ray Film Industries, Inc.?—A. Yes, sir.

Q. That is the same corporation as is named in these proceedings as Ray-Bell Films, Inc?—A. It is.

[367] Q. The corporation is the same corporation but the name has been changed?—A. That's right.

* * * * *

Q. What is the business of the corporate respondent?—A. We have two divisions in our company. One we call the industrial division, which produces long-length motion pictures. Those are sales training—training, educational, and documentary motion pictures. The other division of our company we refer to as the film advertising division. The film advertising division produces, distributes, and sells film advertising.

Q. Did you hear the testimony of Mr. Alexander in Docket 5496, day before yesterday?—A. Yes.

Q. Were you present during his testimony in its entirety?—A. Yes; I was.

Q. Did you hear the testimony of Mr. McInaney in Docket 5496, in the case of Alexander Film Company, which was introduced day before yesterday and completed yesterday?—A. Yes; I did.

[368] Q. Did you hear their description of the method of production of films, library films, trailers,

national advertising films, did you hear that testimony?—A. Yes.

Q. How does your method compare with the method of the Alexander Film Company as related by them?—

A. Our operations are exactly the same as the Alexander Film Company operations in the production and sale of film advertising playlets to local merchants and in the securing of contracts with theaters to display that advertising.

* / *

[374] Q. You heard Mr. McInaney's testimony or Mr. Alexander's testimony about the suitable length of an advertising contract; I believe he stated that in order to get the best results from an advertiser, the contract should run a year. Would your answer to a similar question be identical with that of Mr. Alexander's?—A. Yes; that is a recognized advertising theory or axiom, that the length of an advertising contract should be at least a good consistent number of weeks to obtain results, not spasmodic nor short-term.

Q. Is your business competitive?—A. Film advertising business?

Q. Yes.—A. It is very competitive.

Q. How did you grow from scratch in 1936 to 1,450 theaters in 1947?—A. Well, it took a lot of hard work, a lot of sales effort, to contact theaters and obtain screening agreements from companies that had been in the business for many years, and our sales manager and his sales force, by a lot of sheer [375] effort and hard work and consistent plugging, built one by one those theater contracts up until they gave us a nucleus for film advertising operations.

* * *

[382]

CROSS-EXAMINATION

By Mr. COLLINS:

[384] Q. Now, Mr. Ray, do you sell all the space available on the screens at the theaters where you have exclusive contracts?—A. Do we sell all the space in theaters where we have exclusive contracts?

Q. Yes; all the available advertising space?—[385]

A. Well, that is the aim and the requirements of our salesman, where we have exclusive contracts, that that theater be kept as full as possible, because—

Q. (Interposing) Do you keep it full at all times?—

A. Well, I couldn't say that, because one contract may expire this week and before the next contract waiting to go on the screen is on the screen, there might be a vacant space of one week; theoretically; yes.

Q. Do you permit other distributors to screen advertising on those screens?—A. If there is space available, as I said previously, we do.

Q. And on what terms, Mr. Ray, do you permit them to show their advertising on those screens?—

A. Well, there would be no terms different to our competitor. We take the selling rate that we are charging our advertisers and would charge our competitor that same rate.

Q. You charge the competitor the same rate that you charge—A. Our customers.

Q. Advertising customers?—A. Yes; our customers.

Q. So in that case, then, the distributor who wanted to show advertisements on the screen would have to charge his customer more than you charge your customer in order for him to make any money out of it?—A. No; because we would give him a commission.

[386] Q. You would give him a commission?—A. Yes, sir.

Q. And is that commission a set commission? A standard commission?—A. It is usually the customary agency commission, which is 15 percent.

Q. Now, Mr. Ray, is it possible for a distributor to obtain contracts with merchants and to supply the films and make the necessary arrangements with your company on the 15 percent basis?—A. Was your question: Is it possible, or profitable?

Q. Is it economically possible, from the distributor's standpoint?—A. Yes; it is, because many deals are handled on a 15 percent commission.

Q. Then the films can be supplied and the contracts with the merchants obtained and all of that expense incurred there can be taken care of on a 15 percent margin?—A. Yes. Some of our salesmen, our own salesmen, work on a 15 percent commission.

Q. Yes; but in that case doesn't the Ray-Bell Company supply the films?—A. Yes.

Q. And that is not charged up—the cost of the films is not charged up to the salesman, is it?—[387] A. No.

Q. Now if he would charge the cost of the films up to the salesman and the next step, charge the cost of obtaining the contract with the distributor who had the contract with the theater, could the salesman come out on it then?—A. Well, of course, this competitor will probably have films that may have been supplied to him by a manufacturer or some special film that is going to run on a circuit in a large theater, and that advertiser has paid for those films.

* * * * *

[393] J. DON ALEXANDER was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURGESS:

Q. Will you state your full name?—A. J. Don Alexander.

Q. Where do you reside?—A. In Colorado Springs.

Q. In what business are you engaged, Mr. Alexander?—[394] A. Motion picture advertising.

Q. How long have you been engaged in the motion picture advertising business?—A. Thirty years on the first of next year.

Q. With what film advertising company are you associated?—A. Alexander Film Company.

Q. In what capacity are you connected with that company?—A. President and general manager. ♥

* * * * *

[405] Q. In connection with your contracts with the advertiser, what is the shortest length advertising campaign that you accept?—A. Thirteen weeks. They are very rare.

Q. And what do you ordinarily recommend for an advertising campaign as a minimum?—A. For an advertiser who is in business throughout the year—and in most cases they are—we recommend a yearly contract, because this particular kind of advertising not only requires a consistent change or new freshness in the theaters of different advertising film subjects, but also requires and gives the advertiser best results when they are over a longer period of time. We call it accumulative value of advertising impressions. It is a well known advertising principle applying not [406] only to our medium but to other media as well, that spasmodic or temporary or small doses of ad-

vertising are not effective in putting over a merchandising idea or introducing or selling or popularizing any product or service. For that reason, we do not offer a so-called teaspoon taste of our advertising services, because if we did we would find that that particular taste was so tasteless that it would not create an impression and they would not feel that they had any benefit from their advertising, and therefore they would back away in disgust, and if they were ever approached again their answer would be that they had already tried motion picture advertising and found that it wasn't any good. For that reason, we would rather forego selling a contract rather than creating that condition in the mind of the prospect or merchant or national advertiser.

* * * * *

[408] Q. Now you have in the operation of your business several different types of service, do you not?—A. On a rental basis, you mean?

Q. Well, you have your library film for local service; what other types of film ad business do you have?—A. Well, we have international business, which is an export business, where either special playlets are made or library playlets are remade by re-voicing into foreign languages.

Q. I think we are not particularly interested in the international business, but how about your manufacturer-dealer arrangements and your national advertising accounts, do those [409] differ?—A. You mean the sale of the service to the national advertiser?

Q. Do those differ from your local library playlet service?—A. Yes, sir. Yes, we sell a series of specific playlets to national advertisers, which playlets are put in the library and offered by our sales force to

their dealers throughout the country. Is that what you refer to?

* * * * *

[410] Q. Now, more specifically, on those manufacturer-dealer arrangements, who pays the cost of production of the playlet?—A. The manufacturer.

Q. And he also pays the cost of the prints that are used by [411] the various dealers?—A. Yes, sir.

Q. Then who pays the cost of the showing of the film on the theater screen for the dealer?—A. The dealer either pays all of that cost or in some cases he will pay a half of it. In some situations, as dictated by the manufacturers themselves and their sales outlet, the distributor pays a part of that. In some situations the manufacturer will furnish the films; he will furnish the films and the balance of the cost—of the cost of distribution—is divided between dealers and distributors.

Q. Now in addition to your manufacturer-dealer arrangements, you also have another division of your business which you call national advertising, do you not?—A. Yes, sir.

Q. Will you explain just what that national advertising consists of?—A. Well, our company is a distributor of General Screen Advertising, Inc., which is a corporation in Illinois, located in Chicago, which maintains a complete set of records of theaters which are under contract to us and half a dozen other distributors scattered around the country, and the General Screen Advertising sells to national advertisers, principally to national advertisers who make and sell such products as soap, drugs, foods, and so forth, where they do not have [412] dealers, but in any given community may have—pardon me, do not have exclusive dealers, I should say, but they do have many dealers.

As an example, a food product or soap may be handled by every grocery store in town. So that is not considered a good type of business for a manufacturer to have specific playlets made where dealers' signatures are attached. In most of these cases the type of film used or prepared for distribution on the General Screen Advertising method would be shown on the screens without any dealers' signatures whatever, because there being so many dealers close to every theater they couldn't get all the dealers' names on. * * *

[416] Q. Mr. Alexander, what is the usual length of the national advertising film?—A. The national advertising film is commonly called a minute movie, which means that it is ninety feet in length, although there is another length that is made where the subject is longer than usual and it is 130 feet. In other words, you might say it is a minute to a minute and a half in length, approximately.

Q. And what is the length of the usual manufacturer-dealer film?—A. That is 60 feet, including the trailer.

Q. The manufacturer-dealer film is the same length as the library film?—A. Yes, sir. That length has been established as a standard for theater screen advertising since the beginning.

[417] Q. So that the exclusive contracts with the theaters have been a custom of your business ever since you first started in 1919?—A. Yes, sir.

[425] Cross-examination by Mr. COLLINS:

[426] Q. So in no cases, then, do your salesmen sell an advertiser unless your salesman has a contract

with the theater?—A. Right. It would be useless for him to do it, sir, because there wouldn't be any advantage to him. He'd be better off—if he were locked out of a certain theater situation, he'd be better off to go to another town or go fishing, or something, rather than send in a contract which could not be fulfilled. Does that explain it, sir?

* * * *

[429] Q. Well, now, Mr. Alexander, when you solicit a national advertiser, do you inform the national advertiser of the theaters where you can show the film?—A. Yes, sir; many theaters.

Q. Pardon me?—A. Many theaters.

Q. Well, do you represent to him that you can show the films in the theaters with which you have contracts?—A. Yes, sir.

* * * *

[430] Q. Do you represent to the advertiser that you can screen the films in any other theaters except the theaters with which you have contracts?

* * * *

[431] A. The answer is, we do not represent to an advertiser that we can display his films in any theaters with which we do not have a contract. Does that answer your question, sir?

* * * *

[432] Q. Now with these theaters with which you do not have exclusive contracts, just how do you go about selling the advertiser there?—A. We sell him a space on the screen if there is a space available for him, sir.

Q. Do you first ascertain whether or not there is space available?—A. Yes, sir; the salesman does that.

Q. The salesman first goes and ascertains if there is space available?—[433] A. Yes, sir.

Q. And then he goes and sells advertising?—A. Yes, sir.

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[436] MICHAEL J. MCINANEY was thereupon called as a witness for the respondent and having been first duly sworn, testified as follows:

Direct examination by Mr. BURGESS:

Q. Will you state your full name?—A. Michael J. McInaney.

Q. In what business are you engaged, Mr. McInaney?—A. Film advertising.

Q. And for what organization or company do you work?—A. Alexander Film Company.

Q. What is your official connection with the Alexander Film Company?—[437] A. Vice president in charge of sales.

Q. And are you the general sales manager of the company?—A. Yes.

Q. How long have you been associated with the Alexander Film Company?—A. 24 years.

* * * * *

[445] Q. And the forms of contracts which are used by the company include a clause which in substance provides that during the term of the contract the theater will not show screen advertising for any other advertiser, is that correct?—A. That's right.

* * * * *

[455] Q. And so if you received the request from the manufacturer for theaters that are not listed in your manufacturer-dealer rate book, you attempt to deal through the film distributor that has that theater, regardless of who the distributor may be?—A. First we attempt to get them through our own sales force. If our salesman contacts the theater and he says he has an exclusive agreement with someone else, why,

then we know we have to deal through that other distributor.

Q. Now on your local advertising with the theaters, do you make screen space available to all other competitors upon request?—A. We make it available to competitors or to anybody that is interested in getting space. We got space to sell.

Q. Now will you state just how that is handled?—

A. Well, if a client, advertising agency or a producer of films, writes us and says that their client or they are interested in securing space on the theater screen, we tell them that we'll be glad to service them if they can—if the films are of the standard length that we distribute, which is 60, 90, or 120 feet, which our contracts with the theaters provide for, that we cannot show any other length, and if the films are of the quality that we distribute and if the films are acceptable [456] to the theater, that we will be glad to furnish them at our rate book-rates, less a discount.

Q. And if those three principles are satisfied, then you make your extra space on the theater screens available to anyone?—A. Yes.

* * * * *

[482] Q. Mr. McInaney, from your experience as general sales manager of Alexander Film Company, do you find competition in the film advertising field?—A. And how!

Q. Will you explain just what that competition consists of, so far as theaters are concerned?—A. Well, I would say 60 to 75 percent of our theater contracts, of which we have about nine or ten thousand, expire every year, and it is a wide open field for ourselves or anybody else to contact that theater and try to make agreement [483] with him. So the competition is very keen in the theater end of it because that is the crux of our business.

Q. Is that competition among all of the film advertising companies of the country?—A. Yes; every one of them are striving to get theater contracts and take them away from each other, to get new theaters to agree to sign up for advertising privileges.

[493] Cross-examination by Mr. COLLINS:

[505] Q. Now, Mr. McInaney, with reference to the dealer-advertising programs, I believe you stated this morning that after you had obtained the contract with the dealers, that you invited other competitors into the program?—A. After we obtain the contract from the manufacturer.

Q. After you have obtained the manufacturer's contract?—A. Yes; for production of films and for the servicing of the program to all dealers throughout the country, then we invite other companies in.

Q. Now the number of other companies which you invite to participate in the advertising program is limited, is it not?—A. They are only limited to those who have production facilities and who render the same type of advertising that we do. We do not limit them, but this group on here are about the only ones in the business that have contracts with the theaters [506] providing for the type and length of films that we distribute.

Q. Now you say "this group on here"; would you express that so that the reporter can get it in the record there?—A. The names are listed on Exhibit 22.

Q. And those are what companies?—A. United Film Ad Company, Reid H. Ray Company, Alexander Film Company, Motion Picture Advertising Company, and A. V. Cauger Company. There are

other distributors that handle the programs that are not listed on there, but they still handle the programs if they so desire.

* * * *

[512] WILLIAM HARDY HENDREN, Jr., was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. COZAD:

Q. Will you state your name, Mr. Hendren?—A. William Hardy Hendren, Jr.

Q. Where do you live?—A. In Kansas City, Missouri.

Q. And in what business are you engaged?—A. Motion picture advertising, film advertising business.

Q. And you are connected with the respondent in this case?—A. Yes.

Q. In what capacity?—A. As president.

[513] Q. Mr. Hendren, how long has the United Film Service been engaged in the film advertising business?—A. Since 1924.

* * * *

[515] Q. Now, Mr. Hendren, could United produce library or special film or manufacturer-dealer film if it did not have an outlet for the sale of these films?—A. No.

[516] Q. What is the method of securing this outlet?—A. The method of securing the outlet is to contract with theaters for screen space, in which to display our films.

Q. You speak of contracting with theaters; do you mean on an exclusive or nonexclusive basis?—A. On both bases.

Q. Which method of contracting guarantees an outlet for United?—A. Well, the only method that guar-

antees us a definite market for our film product is the exclusive film contract, because it is only in the case of the exclusive theater contract that we know that we have that much space available, and that much space available for the screening of films.

[518] Q. Has United been willing and is it willing at the present time to display film advertising for its competitors upon screens where United has an exclusive contract?—A. Yes; we are. Our business is to sell screen space, and if we have contracts that provide—contracts with theaters that provide for screen space which we haven't sold, we are anxious to sell it, and it is for sale to anybody that wants to buy, provided that the films conform to the length of film specified in our contract with the theater, and provided that the film is acceptable to the theater as to quality and subject matter.

Q. As an inducement for your competitors to show film ads upon your exclusive screens, do you pay any commission?—A. Yes; we will pay a commission for anyone that is a competitor of ours or an agency, a recognized advertising agency who places with us an order for the showing of films in spaces that we have open for sale.

[533] Q. Mr. Hendren, what is the average length of United's exclusive contracts?—A. Well, that would be difficult to answer as to the average length.

Q. What is the minimum and what is the maximum, then?—A. Well, the minimum is a year. We do have some exclusive contracts which will run for five years, but most of them will run two or three years.

Q. As I understand it, the majority of your exclusive theater screening agreements, then, run two or three years?—A. Yes.

[552] Cross-examination by Mr. COLLINS:

Q. So, Mr. Hendren, it is your contention, then, that a distributor without exclusive contracts has no show in the distributing business?—A. No; Mr. Collins, I wouldn't say he has no show. I would say that it is of material assistance to him in building a business, as was stated by certain of your witnesses.

Q. And a distributor without exclusive contracts is without any advantages in the business, isn't that what you say?—A. Mr. Collins, I can't imagine a distributor in the film advertising business who wants to succeed being unable to secure exclusive contracts with the theaters.

Q. And if you haven't got an exclusive contract, you can't get in, can you?—A. Yes, sir.

Q. You can?—A. Yes, sir. There are many theaters with which we hold contracts which are nonexclusive contracts.

Q. And you can operate and operate successfully without?—A. I said that a man could operate.

Q. Well, can you?—[553] A. To a degree, Mr. Collins, yes, but not to the degree that it requires to invest the type of money in building the library type of service that we build.

[561] Q. But where you have an exclusive contract, all advertisers who have advertising shown on that screen have to go through the United Film Company to get on, do they not?—A. Yes; they do in most cases, there are a few exceptions.

Q. There are a few slip in the back doors—A. No; there are a few, Mr. Collins, that are exceptions where we grant an exception to the theater.

Trial Examiner KOLB. Now, Mr. Hendren, you mentioned a few minutes ago that the national advertising is taken by the Movie Advertising Bureau; is that a trade name used by your company, or is that a separate organization?

The WITNESS. No, it is a trade name used by our company and by the Motion Picture Advertising Service Company.

Trial Examiner KOLB. Another thing which I would [562] like for you to clear up for me: You mentioned in connection with showing films for competitors in theaters where you had an exclusive agreement, that you did that on a commission basis. Will you explain that, how that works?

The WITNESS. Well, if we have a competitor who wants to get us to run a film for some advertiser of theirs in some exclusive theater of ours and we have screen space open, we give them a clearance on it and we allow them an agency fee for having secured that business and placed it with us.

Trial Examiner KOLB. What does that usually amount to, generally?

The WITNESS. It usually amounts to 15 percent.

[564] C. J. MABRY was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. ROSEN:

Q. Will you state your name?—A. C. J. Mabry.

Q. Mr. Mabry, you are the president of Motion Picture Advertising Service Co., Inc.?—A. Yes.

Q. How long have you been president?—A. Since June 1st, 1948.

Q. Mr. Johnson was president, and upon his death you were promoted from vice president to president, were you not, at that time?—A. Yes.

Q. What had been your capacity with the company prior to your election as president?—A. Vice president in charge of sales.

Q. How long have you been connected with the company?—A. Since January 1925, approximately 23 years.

Q. I want you, for the benefit of the record, to state the history of this company, the nature of the business conducted by it and the growth from the time the company commenced until the present time?—

[565] A. Well, the company was organized in September 1921, and from that time until June 1925 the company acted as a distributor of advertising films; it might be termed an exchange of advertising films.

The main source of films at that time was Adogram's in St. Louis and Harcol Film Company in New Orleans. They produced the films and sold them to us, and we used those films to serve various advertisers that we sold.

During those years, acting as strictly a distributor on exchange of advertising films, we didn't make so much progress. And we noticed competition moving in on us with a life action film. So we organized our own studio in June 1925, and became a producer as well as a distributor, distribution not limited to our own films, but including other advertising film campaigns that we could purchase or rent, and we felt were acceptable to the theaters that we served.

From that time on, we have steadily grown from one of the smallest companies into, I believe, the

second largest in the business today, from a volume standpoint. * * *

[568] Q. Mr. Mabry, suppose you proceed now to tell us the various branches of your business, the organization, how that has developed.—A. Well, we have in our business four, you might call it five, departments. We have a production department that produces a library service, a journal library service; also produces what we term as special library service, and it produces special films to order of advertisers.

We have a service department whose responsibility is the receiving of those films and the shipping of the films to the theaters and receiving it back from the theaters and shipping them out to other theaters.

We have an accounting department, which of course handles the administrative and keeping the records.

We have a sales department whose duty is to contract advertisers and sell advertisers, and we have a theater procurement department. The theater procurement department's responsibility is to make agreements with theaters to display advertising films produced by us and advertising films that we might distribute for other producers. [569] I think the functions of those departments—I mean just the name of the department tells you what its function is.

Q. Which department or departments were under your supervision and management, specifically, up to the time you became the president of the company?—

A. The sales department and the theater procurement department.

Q. By the sales department you mean the securing of advertising for advertisers?—A. The securing of advertisers.

Q. And the securing of screening privileges from theaters?—A. And the securing of screening privileges was handled by the theater procurement department under my supervision, and on most of the circuit deals I personally negotiated the deal, approved it.

Q. That is, the securing of the screening privileges?—A. Of the screening privileges.

Q. What kind of contracts does your company make with regard to the securing of screening privileges?—A. Well, we make contracts, under the terms of which we rent or lease all of the time and space that the theater has for advertising, and we then, of course, lease that for resale to other advertisers and distributors, and then we enter into what is termed nonexclusive contracts with some theaters, [570] under the terms of which we are granted the privilege of running certain ads up to certain limitations, the theater placing limitations as to the number that they will run.

* * * * *

[572] Q. Are you familiar with the theater screening agreements presently in force with your company?—A. Yes.

Q. What is the length of time of the theater screening agreements, the so-called exclusive contracts?—A. Well, the guarantee exclusives, one, two, or three years; the no guarantee, that is, where we do not guarantee the theater any minimum amount of money, will run one, two, three and in some cases five years.

Q. And the nonexclusive contracts, how long will they run?—A. The nonexclusive contracts will run one, two, three and five years.

Q. On the average, what would you say about the length of term of the exclusive contract and the non-

exclusive contract with your company?—A. Well, I would say the average on the exclusive is about two years and the average on the nonexclusive is about three years. I make that statement based on the fact that we have approximately 4,600 theaters under contract and the records [573] show that in each of the past three years, that we have been called on to renew approximately 1,500 of those agreements during each of the three years.

Q. Or about a third?—A. About a third. During the current year—I was checking up the other day, and I noticed that we are being called on this year to renew better than 3,000 of our theater contracts that have come up for renewal this year.

Q. Out of the 4,600?—A. Out of the 4,600, which I haven't been able to find out just the reason why, unless it just happens that back in 1946 and '45 we were very aggressive in acquiring theaters, and they happened to fall due this year.

Q. Now, when a contract is made on a nonexclusive basis, what is physically done to the printed form which contains the clause making it exclusive?—A. We merely scratch out the words which state that the exhibitor will not show advertising films that are furnished by any other than our company.

Q. And when the contract is made for a term of less than five years, what is done with the printed word "five" that appears in these contracts?—A. We scratch out the word "five" and substitute in its place one, two, or three, dependent upon whether it is a one-year, two-year or three-year contract.

[574] Q. Mr. Mabry, I want to show you the Commission's Exhibit No. 1, which is in the record and was prepared, as I understand, under your supervision and direction, is that correct?—A. Yes.

Q. There are six columns appearing on that exhibit, in addition to the name of the State. The first one says, "Total Theaters," for illustrative purposes, "Alabama, 318." From what source did you get that information?—A. Film Daily Year Book.

Q. Which is the best available information on the total number of theaters in the State?—A. That is generally accepted in the industry as being authentic information as published in the Film Daily Year Book.

Q. In column 2 you have approximate number that now screen ads, 301 theaters. From where did you get that information?—A. Well, from contacts with the theaters, and I have a rate book, and from competitors' rate book quotations. That is, the number of theaters that would be offered to advertisers.

Q. In the next column, that is, column 3, appears "Number of theaters under contract to M. P. A., 249," in the State of Alabama.—A. I secured that information by direct reference to our contract files.

Q. That figure, 249, includes all contracts, exclusive and nonexclusive, held by your company in that State?—[575] A. Includes all contracts held by my company, including both exclusive and nonexclusive.

Q. Column 4 says, "Number of theater contracts containing the exclusive clause, 143."—A. I secured that information by direct reference to the contracts.

Q. Column 5 has "Number of theater contracts calling for payment of actual time used, no guarantee, 221."—A. I secured that by a direct reference to the theater contracts.

Q. That figure 221, then, would include the non-exclusive as well as the exclusive contracts; 221, that means you pay for whatever space you use, without any guaranteed minimum, that is correct, is it?—A. That's right.

Q. In the last column appears "Number of theater contracts calling for a minimum guarantee, 28."—

A. Yes; "28" was secured by direct reference to the contracts.

Q. The term "minimum guarantee," as I understand it, means that your company will guarantee a minimum revenue to the theater, irrespective of the number of ads placed on their screens?—A. That's right.

* * * *

[576] Q. Is there any difference in the practice operation of your business between the contracts which contain the exclusive clause in which no minimum guarantee is made by your company, and those in which there is a minimum guarantee?—A. We give a minimum guarantee to theaters that have theater space that we consider highly resalable, and those theaters because of the fact that they are receiving a minimum guarantee from us, usually will not accept ads from any other source. We have had some exceptions. The theater agreements which contain the exclusive clause but which do not give any minimum guarantee, usually live up to the exclusive clause so long as we keep the number of ads sold that they want to run. If we fail to keep that number of ads sold, then it is the general practice of theaters to permit other film distributors or advertising film companies to sell such space as we have not been able to sell.

Q. And in that case, you mean you waive the exclusive clause and don't attempt to enforce it?—

[577] A. We waive the exclusive clause. It is just the common practice in the industry to do so.

* * * *

[596] Q. Was it always the practice of your company to seek to obtain exclusive theater screening

agreements ever since you have been with the company?—A. Since January of 1925, it has been the practice to attempt to secure exclusive agreements with theaters that might be termed highly salable to advertisers. Those that we didn't consider too salable, we didn't offer them any guarantee. We would take an exclusive agreement if they offered it to us, of course.

* * * * *

[598] Q. Mr. Mabry, you personally handled the securing of theater screening agreements for M. P. A., did you, not?—A. For approximately the past 15 years; yes.

Q. During that time, you have already testified that your company attempted to obtain from theaters exclusive contracts to screen your film ads, correct?—A. Yes; and actually secured them.

Q. And in some cases you did. In going out to obtain these theater screening agreements from theater owners and managers, did you find in some cases that competition had the theaters under contract when you first called?—A. Yes.

Q. Were such contracts in some cases exclusive contracts, in which the theater screen had been leased to only one distributor?—A. Yes.

Q. How would you go about getting those screens for M. P. A.?—[599] A. Well, I would present various sales arguments to the effect that we could make more money for the exhibitor. That was the main one. To the effect that if he gave us a screening agreement, that we would provide him with a quality or standard of films which was superior to those he was then showing; that we maintained, or would maintain, a regular sales staff to work his theaters, and that he would be assured of a definite revenue month after month, and that by dealing with us only, that

we would eliminate the confusion that quite often arose when two or three different companies were selling ads for his screen.

During recent years, I would say the past ten years, when we have been able to get films that were produced by other producers, I pointed out to him the fact that through the present theater coverage we had and through our present extensive organization, that we were able to act as an exchange or distributor for producers, other producers of film, and that we had that film available for sale to advertisers, as well as the film which we produced, and by having this broad line of film or service to offer to advertisers, that we were in position to produce more revenue for him, or come nearer keeping his screen filled than those companies that did not have such an extensive library or service to offer. And, as a result, we were quite often quite successful in signing up exclusive agreements with theaters.

[600] Q. In the case of these minimum guarantee contracts, you found it necessary in those cases to offer the theater a minimum revenue, irrespective of the number of ads that you could put on the screen?—

A. It is necessary to offer a minimum guarantee to most any individual theater or circuit of theaters today that is popular with the merchants or salable to the merchants. There are very few first-run theaters that show ads today that will make an agreement with you unless you do give them some minimum guarantee.

[604] Q. Mr. Mabry, you have stated that about 30 or 40 percent of the films displayed on the screens under contract are produced by others than M. P.

A.?—A. Yes.

Q. Can you expand that answer to explain that?—

A. Well, Mr. Rosen, we act as film exchange for advertising films, and the more films we can get from other sources, the larger our library service that we have to offer to advertisers. In other words, it gives us more to sell than if we relied only on the films produced by us.

Q. How do you make known that desire of yours to other producers?—A. We advertise nationally in trade publications. We keep [605] in as close contact as possible with other film producers and distributors and make it known to them that we would like to carry in stock, films produced by them, or that we would like to accept orders for display film on our theaters if they are able to get such orders, and that we would allow them the standard A. A. A. A. agency commission of 15 percent on any such business they placed with us.

Trial Examiner KOLB. Mr. Mabry, this 40 percent you mentioned, do you include in that the dealer-manufacturer cooperative film advertising, where the manufacturer has obtained the films from other sources?—A. Yes, sir.

* * * *

By Mr. ROSEN:

Q. What proportion of that 40 percent would you say is comprised by the manufacturer-dealer program?—A. I couldn't answer that without referring to the records.

Trial Examiner KOLB. That also includes national advertising?

The WITNESS. Yes, sir.

[606] By Mr. ROSEN:

Q. Mr. Mabry, what has happened in the industry to those distributors who did not obtain any exclusive

theater screening agreements?—[607] A. From our observation, those that did not make exclusive agreements have all gone out of business.

By Mr. ROSEN:

Q. Why so?—A. They had no definite outlet for their product.

* * * * *

[612]

CROSS-EXAMINATION

By Mr. COLLINS:

Q. Mr. Mabry, you testified that those distributors who did not take the exclusive contracts had gone out of business, is that right?—A. Yes, sir.

Q. Now, was that because they didn't have any theaters to get into?—A. No, sir; there were thousands of nonexclusive theaters they could get into, but nonexclusive theaters do not represent a definite market, and as a result, you cannot maintain or hold a sales force with all nonexclusive theaters, because it involves too great a risk on the part of the salesmen in time and traveling expense to properly cover those towns and those [613] theaters where they operate on a nonexclusive basis.

Q. Well, the fact remains that all those who haven't got exclusive contracts have gone out of business?—

A. Yes; as far as I know.

* * * * *

[616] Q. Now, Mr. Mabry, in the theaters where you have exclusive contracts, do you keep the screens filled with advertising?—A. Not at all times, but I try mighty hard.

Q. And the screens remain—that is, taking your advertising alone, if that was all the advertising shown on the screens, then the screens would remain about 40 percent empty, wouldn't they?—[617] A. Would remain about 40 percent empty?

Q. Yes.—A. No; I wouldn't say that.

Q. Didn't you testify that you invited in other distributors for about 40 percent of the business?—

A. No, sir; I didn't testify that. I testified that about 40 percent of the films that I distribute are produced by other distributors, other film producers.

Q. Don't you have other distributors showing advertising on your screens?

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A.: Yes, sir; they book through me.

Q. And what percentage of your business would you say is that kind of business?—A. That is booked directly through me by other people?

Q. Yes.—A. I would say it doesn't amount to more than ten percent of my total business, because there are very few people that offer to book business through me. The fact is, I wish I could get some more. I could fill up the empty spaces on the exclusive theaters I might have.

Q. Then in the theaters where you have exclusive contracts, you still have empty spaces?—A. Yes, sir; but they are for resale to anybody that has a [618] product that would be acceptable to the theater or that would like to use our product.

Q. But those empty spaces are of no profit to you?—

A. No, sir; that is why I would like to sell them.

Q. Mr. Mabry, I believe it has been the tenor of your testimony that you consider your product a superior product?—A. I would be a poor business man if I didn't consider my product superior.

Q. And you consider your services more efficient than the services offered by your competitors?—A. Yes, sir.

Q. And the theater management relies on quality of service, does it not?—A. That is two of the con-

siderations that they rely on, but they rely on others too.

Q. You are not willing to rely on straight-out competition on the quality and service basis, are you?—

A. I am not willing—you mean in the procurement of the theater contracts, am I willing to rely on quality and service?

Q. In the screen advertising business, exclusive of the exclusive contracts?—A. No; because the theater is in business to make money, and regardless of quality and service, unless I combine a money offer with that, that is, in some way comparable to the money offer that he can get from other people who have a [619] service that might be almost as good as mine, I'm afraid I wouldn't get the theater contract.

Q. But if all of the theaters were left open, don't you think that you would stand as good a show as anybody else in making money out of the business?—

A. I don't think anybody could make any money out of the business, even stay in business, if all the theaters were open, because you couldn't maintain a library service, which is essential to continuing in business, you couldn't maintain a sales force, which is essential to continue in business. At the present time, we may have an exclusive town here and another exclusive one here and two or three nonexclusives between. By routing our salesman to this exclusive one, he has to go through the other one, so he will stop and check with the theater manager and will quite often find space open and quite often pick up a contract, which is to us a more or less supplemental source of income rather than a prime source of income.

Roughly, 75 percent of the volume of business that we do is on screens that will not screen ads for other people. The other 25 percent comes from that

large group of nonexclusive theaters that we are constantly fighting our salesman to work and which he doesn't want to work, because the risk in time and traveling expense is so great, and if I didn't have those exclusive towns to route him to so he would pass through the nonexclusives, I would never get him in there.

[620] Q. Then he goes to the exclusive towns because he knows that he hasn't got any competition to buck?—A. No, sir; he goes there because he knows he has something to sell. He has something definite to sell, he has certain spaces open. He carries with him—our salesman carries with him what I call a territory inventory. In that territory inventory he has a slip on every transaction in his territory, including here is a theater that allows, we will say, four or five ads; back of that he has a slip on each customer sold and the service schedule on that customer. So he can tell at any moment, by reference to this book, just what service is open in any town where we have an exclusive agreement. That isn't true on the nonexclusive agreements.

Q. Now you do, I believe, work with approximately, I believe you said, 200 theaters with which you did not have any contracts?—A. Other than a verbal agreement, and most of that 200, or at least a half of that 200, happen to be theaters that will not run ads for anyone else except us.

Q. And with those you have success without the existence of an exclusive contract, do you not?—

A. My verbal arrangement with those particular—

Q. (Interposing) I would just like for you to answer my question.—A. Yes.

* * * * *

[621] Q. And you have any number of theaters under contract which wouldn't do any business with

anyone else but you, even though you didn't have the contract, do you not, Mr. Mabry?—A. I stated I had approximately a hundred such theaters that I do business with on a verbal arrangement, which verbal arrangement, in my opinion, is just as good as a written exclusive agreement.

Q. Well, you have any number, though, with which you have exclusive contracts, which would do business with you without the contracts, do you not?—

A. I couldn't answer that, because I am doing business with them on a contract basis and I don't know whether they would do business on a noncontract basis or not. If I was a theater I wouldn't, because I would have no assurance of that definite income month after month.

Q. You did business with them before you got the contract, didn't you?—[622] A. With those particular theaters?

Q. Yes.—A. No; I stated I had approximately a hundred theaters that would do business with no one else. I have approximately 200 who are on verbal contracts. The other theaters insist on a contract.

Q. And you did do business with them, though, before they insisted on a contract, did you not?—A. No, sir.

Q. You didn't do any business with them?—A. Not the other 4,400 we are talking about.

Q. And with those you never had done any business at all?—A. Not until I got a contract with them.

* * * * *

[623] Q. Now, when you run screen films for others, on what terms do you run those advertising films?—

A. On the standard A. A. A. A. commission rate of 15 percent commission and 2 percent cash discount.

Q. That is to all distributors?—A. That is to all

distributors and all advertising agencies. I look on another distributor as just another sales agency for me. Four A's stand for American Association of Advertising Agencies.

[852] W. HARDY HENDREN, Jr., was thereupon recalled as a witness for the respondent and, having been previously duly sworn, testified further as follows:

Direct examination (continued) by Mr. COZAD:

Q. Mr. Hendren, you have testified before in this proceeding, and if I recall correctly, it was in Colorado Springs?—A. Yes, sir.

Q. You are the president of the United Film Service?—A. Yes.

Q. As I recall your testimony before, Mr. Hendren, you testified that you have exclusive theater screening agreements, the majority of them are for a period of two or three years, is that correct?—A. Yes.

Q. What length of time do your advertising contracts, or your contracts with advertisers, run?—A. Issued for one year.

[857] Q. I believe you testified before, but if you haven't, you do show screen advertising for all and any film advertising distributor so long as the product meets the standards required by the theater and so long as you have available space, is that right?—A. And so long as the length of the film falls within the limitation of our agreement with the theater.

Q. Would you give us the names of a few film advertising distributors for whom you have shown advertising films in theaters where you had the exclusive contracts?—A. For the Alexander Film Company, Reid-Ray Industries, the Motion Picture

Advertising Service Company, Inc., of New Orleans, A-V Carrier Service Company, the Bilack—I think they called themselves the World Screen Advertising Company, of Omaha, and others. Offhand, I cannot remember their names.

Q. You have offered, have you not, to show film ads for the A & M Service?—A. Yes, we did.

[865] Q. Now, do all of your contracts with the advertisers expire on the same dates?—A. No, sir; because they are not sold on the same dates.

Q. And in your experience have you ever had contracts with advertisers that ran beyond the dates of your contracts with the theaters?—A. It is normal procedure for us to have contracts with the advertisers that run beyond the normal selling rights in our contract with the theater, but our contract with the theater provides that they will screen out to completion contracts that we have with the advertisers that have been sold prior to the termination of our selling rights.

[870] Trial Examiner KOLB. Now, I would like to go back to national advertising. I thought I knew what national advertising was, but I am confused. Will you define that for me?

The WITNESS. Well, I will try to define national advertising as it is thought of in connection with our industry, the motion picture advertising business.

In our business, there are three classifications of business, one is local advertising, which is the advertising we sell to the local merchant, to the local town for screening in local theaters.

The second is what we call our manufacturer-dealer advertising. That is a service where we sell a na-

tional manufacturer on producing a series of films that are designed to sell the product he manufactures, and which product is retailed through dealers. Now, when that series of films have been produced then we go out through our sales staff and contact the dealers and we negotiate agreements with those dealers for the screening of those films in their local theaters. That is a manufacturer-dealer plan and sometimes that dealer [871] is told that, well, if you order the service for screening our local theaters, the national manufacturer will cooperate with you or participate with you in the cost of that screening service.

In other words, here is a contract, it calls for so many weeks of showing in a certain theater, the volume of the contract is going to be, we will say, \$250. Now, the manufacturer has authorized us to tell you that if you think well enough of these films to order them for screening he will pay fifty percent of that bill, you pay the other fifty percent. That is the manufacturer-dealer. The state national programs—

Trial Examiner KOLB. Along that line, Mr. Turner testified with reference to the language you have just described whereby the manufacturer induces the dealer himself to cooperate in the plan?

The WITNESS. They do assist us through the publication of promotion broadsides, dealers' meetings, and so forth, it is much to their advantage to have the dealers match dollars with them for the screening of films that are promoting the manufacturer's product, because by so doing, if they can persuade their dealers to match dollars with them then they will create two dollars for each one dollar that it costs the manufacturer of the product.

Now, the third division is what we call national [872] advertising, and that is where a large national

advertiser, whose product is distributed, not by franchised dealers, but by many dealers in a town, as for example, Alka-seltzer, that is sold by every drug store in town, the manufacturer will have a series of films produced to advertise his product, and then he will place orders direct with us for the distribution and showing of those films nation-wide, and he will pay us direct.

Trial Examiner KOLB. If your Alka-seltzer manufacturer arranges for a cooperative deal with his local distributors, that then ceases to be national advertising and becomes manufacturer-dealer advertising?

The WITNESS. Yes.

Trial Examiner KOLB. So it depends upon whether he is cooperating in the advertising, the local dealer?

The WITNESS. Yes; if field contact is necessary by our sales staff with the dealers then it will be a manufacturer-dealer program, but if that field contact is not necessary—of course there are exceptions, but usually it doesn't carry the name of any local dealer because the manufacturer's film that is advertising his product is sold by many local dealers and not by just one.

* * * * *

[926] MONTY MANN was thereupon called as a witness for the Respondent, and having been first duly sworn, testified as follows:

Direct examination by Mr. BURGESS:

Q. Where do you reside, Mr. Mann?—A. 4537 Lorraine, Dallas.

Q. In what business are you engaged?—A. Tracy-Locke Advertising, an advertising agency.

Q. What is your official connection with the agency?—A. I am vice president and media director.

Q. What is a media director?—A. A media director is a man or woman, as the case may be, who coordinates the advertising media traffic for an advertising agency. He is the liaison between the agency and the advertising media, that is, newspapers, posters, and so forth, he negotiates for time, space, he studies and analyzes the [927] problems of the client, and fits the media into those problems.

Q. In your business as an advertising agency, do you have occasion to use film advertising?—A. Yes, sir.

Q. Do you, in that business, handle any advertising work for large national accounts?—A. We do for the Dr. Pepper Company.

Q. How long have you handled the Dr. Pepper account on a national advertising scale?—A. The account itself since 1925.

Q. And how long have you used screen advertising in connection with that account?—A. Approximately since 1934 or 1935 or 1936, I can't remember the year.

[928] Q. Is it necessary, and are you supplied with rate books of the various advertising film companies?—A. We are. I would like to elaborate on that, if I may.

Q. How do you use those rate books?—A. Well, in using any rate book, including books for film advertising, we must know what theaters are available in case of film advertising, where they are located, what the average weekly attendance is, and what the rates are, otherwise, we are unable to calculate in advance what it might cost our clients, and any media we cannot determine that in connection with we are

unable to recommend, because advertising, as any commodity, must be a known factor, you must have information [929] in order to be able to use it.

Q. Now, when you set up the film advertising program for Dr. Pepper, who pays the cost of the film?—

A. The Dr. Pepper Company.

Q. And then who pays the cost of the distribution and screening of the film?—A. That is a three-way proposition. In some cases, depending on the amount of budget available, and on the type of job that Dr. Pepper Company is able to do with those bottlers, in some cases they pay the full cost, in some cases the bottler pays the full cost, in others, they share the cost between them.

Q. When you said "they," the first time, you meant the Dr. Pepper Company itself?—A. Yes, sir.

Q. In some cases pays the entire cost?—A. Yes.

Q. Now, where is the film obtained for those programs?—A. We obtain the film from a motion-picture production company, in some cases we have obtained them from the U. S. Motion Picture Company of Hollywood, in other cases we obtained them from the Jamerson Film Company of Dallas, we have bought some from Alexander Film Company of Colorado Springs, and I believe one year Cinecolor did our job. However, their processes, I don't believe, actually produced the commercial films, they have somebody else's negative and produce the prints from it.

Q. Who handles the distribution and screening of the Dr. Pepper Film Advertising program?—A. The Motion Picture Advertising Service Company at New Orleans, United Film Ad Company of Kansas City, Alexander Film Company, Colorado Springs, and the outfit named Cauger, I forget where they are located.

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[931] Q. You do not have arrangements with any one of the film companies to handle the over-all picture of the campaign?—A. We do not have.

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Cross-examination by Mr. COLLINS:

Q. Now, getting at this advertising, Mr. Mann, do you ascertain from MPA how many theaters they service?—A. Yes; in other words, each company furnishes us with that information.

Q. And the United furnishes you with that information?—A. Yes, sir.

Q. And Alexander furnishes you with that information?—A. Yes, sir.

Q. And Cauger furnishes you with that information?—A. Yes, sir.

* * * * *

Q. Now, then, do you contract with each one of those different companies and to service the theaters for you?—A. Yes, sir; directly.

Q. You don't have any other dealings with any other companies?—A. We don't at the present time.

Q. Now, had you tried dealings with other companies?—A. Yes, sir; we have. May I elaborate?

Q. Yes?—A. We have, on occasions where those companies have had theaters and areas in which we were interested.

Q. Would you name some of those other companies?—A. Ray-Bell is one.

Q. Ray-Bell?—A. Yes, sir.

At the moment, I can't think of the others, because they [933] are not fresh on my mind, we haven't had occasion to do business with them.

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Q. Now, why is it, Mr. Mann, that you do not use other dis-[934]tributors than those you have

named?—A. Simply because insofar as we know, we have rarely, if ever, been approached by any other distributors notifying us of their existence or their desire to service any of our accounts.

Q. And, do you believe that you get a complete distribution or coverage with these distributors that you have named?—A. Yes, sir; insofar as we are able to ascertain. Among those several distributions, we can have access to all of the theater houses that we could possibly use in connection with our activities, under the present size of the account.

Q. And you don't know of any other distributors with facilities which these distributors have?—A. No, sir; I don't.

Q. That could supply you with the coverage that they can?—A. That is correct.

Q. Now, for what period of time, what period of time does your contract cover with these different distributors?—A. Each contract that we face usually covers the period of one year, it may call for service every week, or on all alternating weeks, or on every third or fourth week, as the case may be, during that year. Then it is either renewed or changed or discontinued at the end of that year. Incidentally, we make a separate contract for each Dr. Pepper operator of which there are some 425.

[935] Q. Now, do these different distributors with whom you have contracts, supply you with individual listings and rates?—A. Yes, sir.

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Q. Do you find that Alexander Film Company sends you a statement for filming or screening these films, in theaters that are listed in the rate book furnished you by MPA?—A. On some occasions; yes. If I may elaborate on that, the reason is because there are a good many theaters in the United States for which

any film distributor may place a contract, and so a number of them are listed as common houses, open [936] houses, to anybody or to everybody.

Q. Listed as open houses to anybody?—A. Yes, sir.

Q. You mean that the MPA supplies you with a rate book which includes houses that are open to any distributor at all?—A. Surely, why not?

Q. So far as you know, that it is true, is it not?—A. Yes, sir.

Q. And would you say that the Alexander Film Company includes in its rate books, theaters which are open to any and all distributors?—A. Yes, sir; otherwise we would have no way of getting the information.

Q. Getting what information, now, Mr. Mann?—A. Names of theaters, weekly attendance, location, sizes of houses, rates.

Q. Well, now, does the Alexander Film Company inform you that these theaters are open to any and all distributors?—A. I don't know that they make a point of doing it; in other words, let me explain this—maybe I am getting out of line, maybe I don't know court procedure, and I apologize for getting out of line if I do; but in our business, what we are interested in is getting the information. It doesn't make a bit of difference as to who handles the business, just so we can buy for our client. We represent the client when it is [937] in his interest, and we perhaps do not delve that deeply into the thing.

Q. Well, isn't this right, Mr. Mann, that so far as you know the theaters, the names of which are supplied to you by the United, are open to United only?—A. Again, I will have to say I think not. I think that every film company that puts out a manual tries to make it a complete service, because in

addition to any selfish interest that they may have—and don't we all have selfish interests—they want us to furnish a complete service to the advertisers, and it is my impression that if they do not put out such a manual, then they are passing up a lot of business that they could have otherwise.

Q. Well, now, Mr. Mann, I appreciate very much getting your impression; but now, then, the thing that I am getting at, and what we are all trying to get at, are the facts, which causes us to form an opinion or give us an impression; now, the things that I am trying to get at now are the facts. Now, I want to know the facts that you have available to you which causes you to form the opinion that all the theaters which Alexander lists in its rate books, are open to any and all distributors?—A. I didn't say that, sir. I didn't say that all the theaters they list are open to all distributors. I said I am sure that they list all the theaters in their rate book, including those which are open to all distributors, if that is the way you asked the question.

Q. You are, then, of the opinion that would cover all theaters in the United States, would it not, that show screen advertising?—A. I am of the opinion that it does.

Q. And that is the kind of rate book that Alexander supplies you?—A. That is right.

Q. Is that the same type of rate book that is supplied by the others, the other distributors which you have named?—A. I am not sure; again, I know that a similar rate book supplied by MPA would probably show the same thing, about the others, I couldn't say.

Q. Well, Mr. Mann, if——A. Let me state it this way, if I may? If we were to request such a book from any film distributor, I am almost positive that they would furnish it.

Q. Have you ever requested it?—A. We never have, because we have never felt the need to.

Q. And you have nothing on which to base that opinion, have you?—A. Yes; I have. There is an agreement, as far as I know, between the Standard Film companies—that is a general term, so maybe you had better take it out—there is an agreement—[939] and if it does not still exist, then I am badly misinformed. This agreement provides a standardization in this media, so that there apparently is no possibility of one film company doing a better job than anybody else, on this particular distribution factor. If there were, then conceivably one film company would get all the business.

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[950] FORREST DUNLAP was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. ROSEN:

Q. Where do you live, Mr. Dunlap?—A. Dallas, Texas.

Q. What is your business?—A. In the theater business and the theater chain business.

Q. Do you own and operate any theaters?—A. Yes, sir.

Q. How many?—A. Well, I have owned and operated sixteen, I don't have quite that many now, small town theaters.

Q. What is the name of your company?—A. Dunlap Theaters.

Q. How long have you been engaged in the theater business?—A. Well, I have been connected with the industry about twenty-five years. I have been operating my own theaters about twelve years.

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[951] Q. Have you ever had any experience in connection with exhibiting motion-picture advertising on the screens of your theaters?—A. Oh, yes. Yes.

Q. When did that start?—A. Oh, I was using it back before the sound days, that is ten or twelve years ago.

Q. When you started out having advertising films on your screen, was the screen contracted to one distributor, or was it open to more than one?—A. No, sir; it was wide open.

[957] Q. There is no minimum guarantee under the present arrangement?—A. No.

Q. So that you started out about ten years ago with advertising?—A. Yes, sir; ten or twelve years ago.

Q. So, for about seven you ran it on an open basis?—A. That is right.

Q. About three years ago you started to run it on an exclusive basis?—A. Yes, sir.

Q. First with Alexander, now with MPA?—A. Yes; three or four years ago, I don't know exactly.

Q. Has the change of policy proved to be satisfactory to you?—A. Very muchly so.

Q. Why?—A. I get more revenue.

[961]

CROSS-EXAMINATION

[967] Mr. COLLINS. Now, you said that your contract with the MPA was for one year?—A. Yes.

Q. Now, why do you limit your contract to one year?—A. Because I might want to change the next year, I might not want to do business with MPA the next year.

Q. Do you find that as a general rule a sufficient length of time to satisfy the advertisers?—A. Well, let me explain, more of the advertisers will only buy advertising for from four months to six months at a time, they won't buy for a total year, and we change around among different ones.

Q. From the nature of the business and everything, do you consider that a sufficient length of time for you and also for the distributor?—A. One year's time, then I can go with someone else if I want to.

Q. Now, since you have been with the MPA, have you had your screens filled all the time?—A. When I made exclusive with them, they were not filled, but they have kept them filled for me ever since.

Q. Ever since that time they have kept them filled?—A. Yes, sir.

Q. And do they send you the advertisements for your approval, before you show them on the screen?—

[968] A. No, sir; they send them over to the theater each month—each week.

Q. And you don't look over them beforehand?—

A. No, sir.

Q. Now, during this time, that the screens were open, with what distributors did you deal?—A. Alexander and MPA, and a concern that was here in Dallas. I have forgotten, they are out of business, I believe.

Q. During the period, or the terms of this contract that you have with the MPA, do you permit any other distributors to screen any advertising on your screen?—A. No; I have an exclusive contract with them for one year.

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[989] BERT E. GRAETZ was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:)

Direct examination by Mr. ROSEN:

[1990] Q. Mr. Graetz, you are now employed as the District Sales Manager for MPA?—A. Well, my proper title is Divisional Sales Manager.

Q. Divisional Sales Manager?—A. Yes, sir.

Q. For what territory?—A. For Texas, New Mexico, and Arizona.

Q. How long have you been employed by MPA?—

A. I would say approximately a little better than thirteen years.

Q. Had you been in the motion-picture advertising business prior to that time?—A. Yes, sir.

Q. For whom?—A. I was employed by Alexander Film Company for a period of perhaps two or three years.

Q. Where did you start out with MPA?—A. I started as a salesman for MPA in the state of Tennessee.

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[1991] Q. Did MPA at that time have any theater screening agreements with any theaters in Tennessee in the territory you were working?—A. Very few.

Q. What were your duties in Tennessee with regard to selling?—A. My duties, when I went to Tennessee, were to acquire the screening rights to theaters, then also to sell the advertising to fill those spaces.

Q. Which came first, in the matter of timing?—A. Well, I had to contact the theater owners before I could sell any ads.

Q. Why?—A. Because you can't—the salesmen wouldn't go out to sell an ad unless he has a certain commitment and he knows that ad is going to be shown after it is sold.

Q. At the time you started in Tennessee, did MPA have any open screens that it was working which were under nonexclusive arrangements?—A. Yes, sir.

Q. In those cases, you mean the theater would show advertising, not only for MPA but also for competitors?—A. Yes, sir.

Q. Were you able to sell advertising to service those screens at that time?

[992] A. I sold to some extent, it was quite an effort to sell them, but I did sell them.

Q. What were the difficulties that you, as a salesman, encountered with regard to selling advertising for theater screens that were open to more than one distributor?

A. For a salesman to work entirely, or practically all theaters, that are nonexclusive, there is too much effort of several different men trying to fill that same screen.

[994] Q. All right. Then when you were in Tennessee, what did you do to cure that situation?—A. I eventually, after a certain length of time, I contacted a large circuit of theaters and signed an exclusive agreement, acquired exclusive rights for MPA.

Q. What was the name of the circuit?—A. That was the Crescent Amusement Company, Nashville, Tennessee.

Q. What kind of a contract did you get, then, for the whole [995] circuit?—A. I get an exclusive contract for all of their theaters, which covered the greater portion of Tennessee and a part of Kentucky.

Q. And then what happened with regard to your

ability to sell advertising there, and how you serviced those screens?—A. Well, we were—we were very successful, and we managed to fill all those screens, and brought the business of Tennessee and Kentucky from a very, very small business, up to a very substantial business.

Q. At the time you went into Tennessee, am I to understand that MPA had no exclusive screening rights in Tennessee with any of the theaters at all?—

A. No, sir; not to my knowledge.

Q. You mean they didn't have?—A. They had none.

[996] Q. What business did MPA have in Texas, or when you were appointed Divisional Sales Manager—I am talking about in regard to theaters?—A. Their business in the State of Texas at the time I took it, they had a very, very small business, I employed one salesman at that time, and he operated, with my assistance, and managed to secure just a little business, that is the only way we could get anything.

Q. Is that the way you built up the business here?—A. Yes, sir.

Q. And the first thing you have to do to build up the busi-[997]ness, as I understand, both in Tennessee and Texas, was to sign up some exclusive contracts?—

A. Yes, sir.

Q. Do you run into any competition in the State of Texas and Arizona and New Mexico in the securing of screen privileges?—A. Yes, sir.

[998] Q. Who are the competitors?—A. Alexander Film Company is naturally, we consider, our largest competitors.

Q. Any others?—A. But there are other small independent firms that have a few films they might sell to theaters that they can get to run them. If they can have the theaters run them, they are glad to do it.

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[1006] Q. Are all of those we are speaking of signed up on an exclusive basis?—A. Yes, sir.

Q. With terms running what—one, two, or three years?—A. Usually one year, two years or three years. Some of them sign up for as much as five years, but in most cases they asked me to reduce it to one or two years, which is all right.

Q. The longest term of any of them is five?—A. I think the longest term.

Q. And the shortest is one year?—A. Yes.

[1001] Q. You would say on the average it would run about two or three?—A. I would say about two.

Q. Now, in selling advertising, how long do those contracts generally run?—A. They usually run over a period of twelve months.

Q. You mean when you go in to sell a local advertiser, he would generally sign up for advertising over a twelve-month period?—A. In the majority of cases, I would say about twelve months; I have on occasions sold a six-month contract or a shorter period of time, if necessary. Most of them are a year.

[1006] Cross-examination by Mr. COLLINS:

Q. Mr. Graetz, before you entered into these exclusive contracts with these theaters, they were open to any and all distributors?—A. Some.

Q. Some?—A. Some of them were.

Q. And some were not?—A. Some were under exclusive agreements to perhaps one of our competitors.

Q. Now, when you entered into these exclusive agreements, were these theaters showing any advertising films under agreements with other distributors?—A. Yes, sir.

Q. And under the terms of your agreement, they had to stop. [1007] showing advertisements in those theaters?—A. They had—according to our agreement, our exclusive agreement, I may answer that in my own way?

Q. Yes.—A. According to our exclusive agreement, after the expiration of whatever the terms of their agreement is, they must cease taking any new contracts or renewing any such.

Q. They can show out?—A. They can complete their contracts.

Q. And then after that?—A. They cannot renew it.

Q. They cannot renew it to show any more?—A. That is right.

Q. Now, I believe you said that your contracts ran one, two and three, and up to five years?—A. That is right.

Q. What percentage would you say are one year?—

A. Well, I would say that the biggest percentage of them, the biggest percentage is one year.

Trial Examiner KOLB. Are these theater screening agreements you are talking about?

Mr. COLLINS. No; I am talking about the agreement between MPA and the theaters.—A. That is right, theaters agreement, is what we had reference to.

[1008] Q. Yes.—A. I would say that over fifty percent of them are one year.

Q. And you find that sufficient for the existing conditions?—A. I think so; yes. He has the privilege of changing after the expiration of that year, to some other competitor firm, if he so desires.

[1043] Direct examination by Mr. BURGESS:

Q. Will you give your full name, Mr. Forsythe?—

A. Earnest Hugh Forsythe.

Q. Where do you reside?—A. 601—I mean 201 Burr Street, Houston.

Q. In what business are you engaged?—A. Well, I guess you would call it theater coowner or manager. Me and my wife own the theater.

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[1044] Q. In connection with your theater business do you handle screen advertising?—A. Yes, sir.

Q. Have you had occasion in the past to handle screen advertising for Theater Publicity Service?—

A. Yes, sir.

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[1045] Q. What was your arrangement with Theater Publicity Service as to when they should pay you for screening?—A. Well, the contract called to be paid, you know, on the first of the month but when I was running the ad they paid me every week. That is how come me to run it six weeks without trying to find out anything about it because I figured they would pay me after it run a month, and I run it for six weeks and I still had not received any check for them or heard from them.

Q. Then what did you do?—A. Then I called them and their phone was temporarily disconnected and I tried to find out what was the matter and I couldn't find out, so I took the ad off the screen.

Q. Did you ever put the ad back on the screen?—A. No, sir.

Q. Were you paid for the six weeks' service that you had run?—A. No, sir.

Q. You had been paid for the prior six or seven weeks?—A. Yes, sir.

Q. At the beginning? Have you at any time been paid for the last six weeks that you ran it?—A. No, sir.

[1046] Cross-examination by Mr. COLLINS:

Q. Is that the only motion-picture advertising that you have carried?—A. No, sir; I carry with four different companies.

Q. Four different companies?—[1047] A. Yes, sir.

Q. What four different companies do you carry the—A. Alexander and the MPA and this Publicity outfit and Town Talkies.

Q. You don't have any contract with any of them, only just for the specific advertising, is that it?—A. That is all, just advertising.

Q. And your theater is open to all?—A. Yes, sir.

Q. And the present arrangements have proven entirely satisfactory to you?—A. No, sir. Do you mean—just how do you mean that, being satisfactory? Do you mean with different companies?

[1048] Q. Yes; with the exception of this particular company.—A. Yes, sir.

Q. Have you ever had any exclusive contracts with any of them?—A. No, sir.

[1112] CARL J. MABRY was thereupon called as a witness for the Respondent, Motion Picture Advertising Service Company, Inc., and, having been previously sworn, testified as follows:

Direct examination by Mr. ROSEN:

[1114] Q. What are the contracts that your company has averaged as to their term?—A. They average about three years at the present time. The fact is, half of them are three to five years, and the other half, I believe, are less than three years. They average about three years, but we work to get five-year contracts where no guarantee is involved. If a guarantee is involved, then we sometimes have to limit that because we don't want to take the risk.

Q. In those cases what would you say the term would be, with the guarantee?—A. Usually we try to get three years, two to three years.

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[1116] Q. Well, you say that most of the advertising contracts are made for a year, either to run every week or every other week?—A. Every week or every other week schedule.

Q. Is it possible in those cases to display the advertising exactly over the term of the advertiser's contract, what I mean is, does it take longer than a year to display advertising where the advertiser's contract calls for a year's run once a week for 52 weeks?—A. No. On a library service it takes about 60 days to get the advertiser's contract started, which means that it would take 14 to 15 months to complete his deal. On a special film service where you have got to produce special films for the advertiser it might be from six months or maybe even a [1117] year after you sign the advertiser up before you could actually start him.

Q. And in the case of a special film, if it called for 52 weeks and you had a special film it might take, say, something over 18 months, you mean, to run?—A. Eighteen months to two years.

Q. What I was asking you was this: Even in the case where it called for one display each week for

52 weeks of a syndicated film, doesn't that advertiser in some cases have to wait his turn to get on the screen if you are already filled up, so that you can't actually run that out right from the minute of the contract for the next 52 weeks?—A. No; unless he enters into that agreement. We control that to a certain extent by not letting our salesmen sell space that isn't available.

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[1118] *Cross-examination by Mr. COLLINS:

[1119] Q. Mr. Mabry, when you take a contract with a theater and another distributor has advertising arrangements with the theater to screen advertising films it is understood that the theater will screen those advertisements out to the extent of the agreement, isn't it, to the time limit of the agreement?—A. Do I understand you to mean that when I acquire a theater do I have in my agreement with that theater provision whereby that theater can run to completion advertisers' contracts that are already sold?

Q. Yes.—A. Yes, sir.

[1120] * * * * *

Q. Well, now, you said something there about the other distributors' selling period had expired. When does the selling period expire?—A. It expires when the contract expires, when the theater contract expires. Say, for example, a theater makes a contract for one year starting January first and expiring December thirty-first, the company holding that contract can sell right on up to December thirty-first.

[1121] * * * * *

Q. So your contract with the theater, then, really refers more to the selling period than it does to the screening period, doesn't it?—A. To an extent. It all

depends on the run out that the theater allows. If the theater allows you a run-out period of 60 days, then the two of them about run concurrently, but if he allows you a run-out period of, say, a year, which we encourage because we naturally want to sell contracts right up to the end of our contract, then the servicing period might run a year beyond the expiration of the agreement.

Q. And are those run-out periods set forth in your screening agreement?—A. Yes, sir.

[1122] Q. Now, what percentage did you say of your contracts were for five years?—A. About 25 percent. You have that in the records, Mr. Collins. I gave you a list of it. It is approximately 25 percent.

Q. Well, the reason that I was inquiring about it, I thought you had the information at hand. You were testifying from something.—A. Yes; I do. I have it here. It is 25 percent.

Q. Now, you say that you are trying to get increases all along, that is, you are trying to get your contracts for a period of five years instead of the one year?—A. Yes, sir. That is very sound business.

Q. Now, it was over a year ago or right at a year ago since we got that information with reference to percentages in [1123] the record. Now, have the percentages changed since that time?—A. It might have changed slightly. In other words, we would pay possibly 5 percent, or something like that. It might be up as high as 30 percent now.

Q. Some of it has increased, that is, the long terms have increased, and have you had decreases in some cases?—A. In the long terms?

Q. Yes. Haven't you had it where the terms have decreased?—A. No. We are working toward the end.

of increasing the length of those contracts, Mr. Collins, so that we can build a better service.

Q. Well, I am not questioning the proposition that you are working toward that end, but I am asking you as a fact if any have decreased?—A. If any of the terms of my contracts have decreased?

Q. If any of the theaters with which you have had long-term contracts have asked that the terms be decreased?—A. There probably have been some cases, but I would say the cases of where the term has been increased far outnumber the ones where it has been decreased, because that it is our sales policy.

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